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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 40

HANS MAX HAUPT, PETITIONER

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 26, 1946
CERTIORARI GRANTED MAY 27, 1946

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 49

HANS MAX HAUPT, PETITIONER

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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1 [Caption omitted.]

3 In the District Court of the United States for the Northern District of Illinois, Eastern Division

Of the February Term in the Year 1944

44 Cr. 129

NORTHERN DISTRICT OF ILLINOIS,
Eastern Division, ss:

Indictment

Filed Feb. 25, 1944

The grand jurors for the United States of America empaneled and sworn in the District Court of the United States for the Eastern Division of the Northern District of Illinois at the February Term of said Court in the year 1944, and inquiring for said district, upon their oath present, that Hans Max Haupt at Chicago, Illinois, in the Eastern Division of the Northern District of Illinois and within the jurisdiction of this Court, continuously and at all times from June 17, 1942, up to and including July 17, 1942, under the circumstances and conditions and in the manner and by the means hereinafter set forth, then and there being a person owing allegiance to the United States, in violation of his said duty of allegiance, unlawfully, feloniously, maliciously, intentionally, traitorously and treasonably did adhere to the enemies of the United States, to wit, to the Government of the German Reich, its counselors, armies, navies, agents, representatives and subjects with which the United States, at all times since December 11, 1941, has been at war, and did give to said enemies aid and comfort; that is to say:

Said Hans Max Haupt has been a citizen of the United States at all times since the year 1930 and a resident thereof since 1923.

4 On or about June 17, 1942, one Herbert Johanne William Godlove Haupt, alias Herbert Hans Haupt, alias Herbert Haupt, alias Bingo, hereinafter referred to as Herbert Haupt, an agent and representative of the Government of the German Reich, came into the United States, and throughout the period of time mentioned in this indictment served the Government of the German Reich as a secret agent, saboteur, and spy, in the carrying on of its war with the United States, which service, so far as the character of same is known to said grand jurors, involved, among other things, the destruction of certain war materials, premises, and utilities of the United States, the receipt of money from the Government of the German Reich and the disbursement of such money

in connection with the procurement, manufacture, and use of explosive substances and sabotage devices for and in the destruction of the war materials, premises, and utilities of the United States and the recruiting and hiring of persons, to said grand jurors unknown to engage in unlawful and hostile enterprise consisting in using said explosive substances and sabotage devices in the destruction of the war materials, premises, and utilities of the United States.

Said service of Herbert Haupt throughout said time also involved the securing of information concerning the national defense of the United States and concerning the mental attitude of its subjects and citizens toward said war and toward the said Government of the German Reich, and transmitting such information from time to time to the Government of the German Reich, to assist said Government in carrying on its said war with the Government of the United States, and the employment of other persons, to said grand jurors unknown, to secure such information for him, the said Herbert Haupt, and to secure for and transmit such information to, said Government of the German Reich for the purpose aforesaid.

5 Said service of Herbert Haupt, throughout said period of time also involved the making and conveying of false statements and reports within the United States with intent to interfere with the operation and success of the military and naval forces of the United States to the advantage of the Government of the German Reich in carrying on its said war with the Government of the United States, and the employment of other persons, to said grand jurors unknown, to make and convey such false statements and reports for the purpose aforesaid.

Said service of Herbert Haupt also involved his remaining within the United States for further orders from said Government of the German Reich pertaining to his said agency and service.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that the said adherence of Hans Max Haupt to the Government of the German Reich, its counselors, armies, navies, agents, representatives and subjects, and said giving of aid and comfort by Hans Max Haupt to the same consisted in his receiving, harboring, relieving, and assisting Herbert Haupt in transporting said Herbert Haupt by automobile and in his furnishing hospitality to the said Herbert Haupt through said period of time, including the time from June 17, 1942 to July 17, 1942; in his aiding, abetting, meeting with, assisting, counseling, and advising Herbert Haupt in and concerning said service of said Herbert Haupt to the Government of the German Reich; in his countenancing said service; in his carrying out requests and instructions of said Herbert Haupt in connection with said service; in his purchasing an

automobile for the said Herbert Haupt; in his attempting to procure employment for the said Herbert Haupt; in his giving false information regarding and concealing the identity of said Herbert Haupt, as a representative of the Government of
6 the German Reich, and the mission of Herbert Haupt in the United States; in his receiving, holding, possessing, safeguarding, and concealing the property and funds of said Herbert Haupt, and in misrepresenting and concealing the ownership of said property and funds, and in his maintaining, harboring, feeding, and supporting the said Herbert Haupt throughout said period of time; he the said Hans Max Haupt when so adhering, and giving aid and comfort, to the Government of the German Reich, its counselors, armies, navies, agents, representatives, and subjects, well knew all the premises in this indictment aforesaid, and well knew the character of said service of Herbert Haupt to the Government of the German Reich, and intended to and did adhere to said enemies and gave said enemies aid and comfort.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that, in the prosecution, performance, and execution of said treason and of said malicious, intentional, traitorous, and treasonable adhering and giving aid and comfort, Hans Max Haupt at the several times hereinafter mentioned in the specification thereof in the Eastern Division of the Northern District of Illinois, with the intention of adhering to the said enemies and giving them aid and comfort, did do, perform and commit among others certain overt and manifest acts; that is to say:
7 1. Said Hans Max Haupt, on or about June 19, 1942, met and conferred with, counseled, and advised the said Herbert Haupt, at the home of Walter Otto Froehling and Lucille Froehling, 3643 North Whipple St., Chicago, Illinois, with the purpose and intent of aiding said Herbert Haupt in carrying out his mission as an agent for the Government of the German Reich in the United States as aforesaid.

2. Said Hans Max Haupt, on or about June 19, 1942, aided the said enemy, Herbert Haupt, in concealing in the home of Hans Max Haupt, 2234 N. Freemont St., Chicago, Illinois, a large sum of money, the said Hans Max Haupt well knowing that the said money was to be used for the purpose of assisting said Herbert Haupt in carrying out his mission as an agent of the Government of the German Reich in the United States as aforesaid.

3. Said Hans Max Haupt, on or about June 19, 1942, accepted a large amount of money from said enemy, Herbert Haupt, for safe keeping and concealment in the home of the said Hans Max Haupt and Erna Haupt, 2234 N. Freemont St., Chicago, Illinois, well knowing that the said money was to be used for the purpose of assisting the said Herbert Haupt in carrying out his mission as an

agent of the Government of the German Reich in the United States as aforesaid.

4. Said Hans Max Haupt, on or about June 20 and 21, 1942, met and conferred with the said enemy, Herbert Haupt and with Erna Haupt and Otto and Kate Wergin at home of the said Otto and Kate Wergin, 5416 S. Wood St., Chicago, Illinois, with the purpose and intent of aiding the said Herbert Haupt in carrying out his mission as an agent of the Government of the German Reich in the United States as aforesaid.

8 5. Said Hans Max Haupt, on or about June 20 and 21, 1942, at the home of Otto and Kate Wergin, 5416 S. Wood St., Chicago, Illinois, together with Erna Haupt and Otto and Kate Wergin, concealed the identity of Herbert Haupt from Lorraine Dehmler, Chicago, Illinois, for the purpose of assisting the said Herbert Haupt in carrying out his mission as an agent of the Government of the German Reich in the United States as aforesaid.

6. Said Hans Max Haupt, on or about June 21, 1942, transported and conveyed said enemy, Herbert Haupt, from the home of Otto and Kate Wergin, 5416 S. Wood St., Chicago, Illinois, to the home of Walter Froehling and Lucille Froehling, 3643 N. Whipple St., Chicago, Illinois, for the purpose and with the intent of having the said Herbert Haupt harbored at the home of Walter and Lucille Froehling as aforesaid, and for the purpose of aiding the said Herbert Haupt in carrying out his mission for the Government of the German Reich in the United States as aforesaid.

7. Said Hans Max Haupt, on or about June 21, 1942, together with the said enemy, Herbert Haupt, and with Erna Emma Haupt, Otto Wergin, Kate Wergin, Walter Froehling, and Lucille Froehling, attended a meeting at the home of Walter and Lucille Froehling, 3642 N. Whipple St., Chicago, Illinois, with the purpose and intent of assisting said Herbert Haupt in carrying out his mission for the Government of the German Reich in the United States as aforesaid.

8. Said Hans Max Haupt, on or about June 21, 1942, had a conference with the said enemy, Herbert Haupt, and with Otto and Kate Wergin, at the home of Hans Max Haupt and Erna Haupt, 2234 N. Freemont St., Chicago, Illinois, for the purpose of assisting the said enemy in carrying out his mission for the Government of the German Reich as aforesaid.

9 9. Said Hans Max Haupt, during the period of time from June 19, 1942, to and including June 27, 1942, held, possessed, safeguarded, and concealed in his home at 2234 N. Freemont St., Chicago, Illinois, a large sum of money of the said enemy, Herbert Haupt, well knowing that said money was to be used in assisting the said enemy in carrying out his mission as an

agent of the Government of the German Reich in the United States as aforesaid, and well knowing that the said holding, possessing, safeguarding, and concealing of said money would assist the said Herbert Haupt in carrying out his said mission.

10. Said Hans Max Haupt, on or about June 22, 1942, accompanied said enemy, Herbert Haupt, to the home of Andreas Conrad Grunau, 6361 Leoti Ave., Chicago, Illinois, for the purpose of assisting the said Herbert Haupt in securing employment so that the said enemy might conceal his identity and mission as an agent of the German Reich and be permitted and enabled to carry out and pursue his said mission.

11. Said Hans Max Haupt, on or about June 22, 1942, accompanied the said Herbert Haupt to the home of Heinrich Koch, 7240 N. Odell Ave., Chicago, Illinois, for the purpose of further assisting said enemy in procuring employment, so that he might conceal his identity and mission as an agent of the Government of the German Reich and be permitted and enabled to carry out and pursue his said mission.

12. Said Hans Max Haupt, on or about June 22, 1942, harbored and sheltered the said enemy Herbert Haupt at the home of Hans Max Haupt and Erna Haupt, 2234 N. Freemont St., Chicago, Illinois, well knowing that the said enemy was an agent of the Government of the German Reich in the United States to commit sabotage, act as a spy and perform other services for said Government as aforesaid, all with the intent and for the purpose of assisting said enemy Herbert Haupt in carrying out his mission as an agent of the Government of the German Reich as aforesaid.

13. Said Hans Max Haupt, on or about June 23, 1942, accompanied the said enemy Herbert Haupt to the Warner Motor Sales, 958 Diversey Park Way, Chicago, Illinois, to arrange for the purchase of an automobile for the said enemy Herbert Haupt, with the purpose and intent of assisting the said enemy in carrying out his mission as an agent of the Government of the German Reich as aforesaid.

14. Said Hans Max Haupt on or about the 23d day of June 1942, while at the Warner Motor Sales, 958 Diversey Park Way, Chicago, Illinois, signed a financial statement and an order for the purchase of an automobile and made an initial payment of money toward the purchase of said automobile, with the intent and for the purpose of procuring an automobile for the said enemy, Herbert Haupt, and with the intent and for the purpose of assisting the said enemy, Herbert Haupt, to carry out his mission as an agent of the Government of the German Reich, as aforesaid, and to conceal the identity of Herbert Haupt as such agent.

15. Said Hans Max Haupt on or about June 24, 1942, again accompanied the said enemy Herbert Haupt to the Warner Motor Sales, 958 Diversey Parkway, Chicago, Illinois, to complete the arrangements for the purchase of an automobile for the said enemy with the intent and purpose of assisting said enemy
11 in carrying out his mission as an agent of the Government of the German Reich, as aforesaid.

16. Said Hans Max Haupt on or about the 24th day of June 1942, while at the Warner Motor Sales, 958 Diversey Parkway, Chicago, Illinois, made a further payment in cash toward the purchase of an automobile for said enemy Herbert Haupt and completed arrangements for the purchase of said automobile and did purchase said automobile for said enemy Herbert Haupt with the intent and for the purpose of assisting said enemy Herbert Haupt in carrying out his mission as an agent of the Government of the German Reich, as aforesaid.

17. Said Hans Max Haupt, on or about June 23, 1942, harbored and sheltered the said enemy Herbert Haupt at the home of Hans Max Haupt, 2234 N. Freemont St., Chicago, Illinois, well knowing that the said enemy was an agent of the Government of the German Reich in the United States to commit sabotage, act as a spy and an enemy agent and perform other services for said Government as aforesaid, all with the intent and for the purpose of assisting said enemy Herbert Haupt in carrying out his mission as an agent of the Government of the German Reich as aforesaid.

18. Said Hans Max Haupt, on or about June 23, 1942, had a conversation with one Gustav Zermer at the home of Hans Max Haupt, 2234 N. Freemont St., Chicago, Illinois, and in said conversation attempted to secure a lodging place for the said Herbert Haupt with the intent and purpose of assisting him in concealing his whereabouts and permitting and enabling the said Herbert Haupt to carry out and further his said mission as an agent of the Government of the German Reich as aforesaid.

19. Said Hans Max Haupt, on or about June 23, 1942, secured a mailing address or "mail drop," for the said Herbert Haupt for the purpose of assisting him in concealing his whereabouts and permitting and enabling him to carry out and further his said mission as an agent of the Government of the German Reich as aforesaid.

12 20. Said Hans Max Haupt, on or about June 24, 1942, harbored and sheltered the said enemy Herbert Haupt in his home at 2234 N. Freemont St., Chicago, Illinois, well knowing that said Herbert Haupt was an agent of the Government of the German Reich in the United States to commit sabotage, act as a spy and enemy agent and perform other services for said Government as aforesaid, all with the intent and for the purpose of as-

sisting said enemy Herbert Haupt in carrying out his mission as an agent of the Government of the German Reich as aforesaid.

21. Said Hans Max Haupt, on or about June 25, 1942, harbored and sheltered the said enemy said Herbert Haupt in the home of Hans Max Haupt and Erna Haupt, 2234 N. Freemont St., Chicago, Illinois, well knowing that the said Herbert Haupt was an agent of the Government of the German Reich in the United States to commit sabotage, act as a spy and enemy agent and perform other services for said Government as aforesaid, all with the intent and for the purpose of assisting said enemy Herbert Haupt in carrying out his mission as an agent of the Government of the German Reich as aforesaid.

22. Said Hans Max Haupt, on or about June 26, 1942, harbored and sheltered the said enemy Herbert Haupt in his home at 2234 N. Freemont St., Chicago, Illinois, well knowing that said Herbert Haupt was an agent of the Government of the German Reich in the United States to commit sabotage, act as a spy and enemy agent, and perform other services for said Government as aforesaid, all with the intent and for the purpose of assisting said enemy Herbert Haupt in carrying out his mission as an agent of the Government of the German Reich as aforesaid.

13 23. Said Hans Max Haupt, on or about June 27, 1942, harbored and sheltered the said enemy Herbert Haupt in his home at 2234 N. Freemont St., Chicago, Illinois, well knowing that said Herbert Haupt was an agent of the Government of the German Reich in the United States to commit sabotage, act as a spy and enemy agent and perform other services for said Government as aforesaid, all with the intent and for the purpose of assisting said enemy Herbert Haupt in carrying out his mission as an agent of the Government of the German Reich as aforesaid.

24. Said Hans Max Haupt, on or about June 27, 1942, held, possessed, safeguarded, and concealed in the home of Hans Max Haupt and Erna Emma Haupt, 2234 N. Freemont St., Chicago, Illinois, a large sum of money of said enemy Herbert Haupt, received by him from the Government of the German Reich, well knowing that the said money was for his use in carrying out his mission as an agent of the Government of the German Reich in the United States and well knowing that the said holding, possessing, safeguarding, and concealing of the money would assist the said Herbert Haupt in carrying out his said mission as aforesaid, all with intent and for the purpose of assisting said enemy Herbert Haupt in carrying out his mission as an agent of the Government of the German Reich as aforesaid.

25. Said Hans Max Haupt, on or about June 27, 1942, upon the finding by agents and officials of the United States Government of a large sum of money belonging to the said enemy, Herbert

Haupt, in the home of Hans Max Haupt and Erna Emma Haupt, 2234 N. Freemont St., Chicago, Illinois, thereupon misrepresented the ownership of said funds to agents and officials of the United States Government, for the purpose of concealing the identity of the said enemy Herbert Haupt as an agent of the Government of the German Reich and of assisting him in carrying out his mission as such agent as aforesaid.

14

26. Said Hans Max Haupt, on or about June 27, 1942, with knowledge that the said Herbert Haupt was an enemy agent, met and conferred with Erna Emma Haupt, Walter Freehling, Lucille Freehling, Otto Richard Wergin, and Kate Martha Wergin at the home of Hans Max Haupt and Erna Emma Haupt, 2234 N. Freemont St., Chicago, Illinois, and then and there agreed with them to make false statements, give false information, and conceal the true facts concerning the identity and mission of said Herbert Haupt as an agent of the Government of the German Reich, the manner of his return to the United States, and regarding activities of the said Herbert Haupt as a saboteur and spy for the Government of the German Reich as aforesaid, all with the intent and for the purpose of assisting said enemy Herbert Haupt in carrying out his mission as an agent of the Government of the German Reich as aforesaid.

27. Said Hans Max Haupt, on or about June 28, 1942, for the purpose and with the intent of concealing evidence and information concerning the said mission of the said Herbert Haupt in the United States and his activities and identity in respect thereto and of aiding and assisting said Herbert Haupt in carrying out his said mission in the United States as an agent of the Government of the German Reich, went to a tavern known as the Roscoe Tavern, 2025 Roscoe St., Chicago, Illinois, to make arrangements for the concealment of a large sum of money to wit: the sum of $900.00.

15

28. Said Hans Max Haupt, on or about June 28, 1942, for the purpose and with the intent of concealing evidence and information concerning the said mission of the said Herbert Haupt in the United States and his activities and identity in respect thereto, and of aiding and assisting the said Herbert Haupt in carrying out his said mission in the United States as an agent of the Government of the German Reich, went to the home of Carl Eggert at 3438 N. Seeley Avenue, Chicago, Illinois, to turn over to him for safeguarding and concealment, the sum of to wit: $900.00.

29. Said Hans Max Haupt, on or about June 28, 1942, gave false and misleading information to agents and officials of the United States Government concerning the identity of said Herbert Haupt.

as an agent of the Government of the German Reich and concerning the mission and activities of said Herbert Haupt as a saboteur and spy for the Government of the German Reich, well knowing the enemy status of said Herbert Haupt and his mission and activities as such enemy, with the intent and purpose of adhering to and giving aid and comfort to the said enemies of the United States, with the intent and purpose of concealing the identity of the said Herbert Haupt as an agent of the Government of the German Reich and with the intent and purpose of concealing his mission and activities as a saboteur and spy for the said Government of the German Reich as aforesaid.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

J. ALBERT WOLL,
United States Attorney.

[No. 44 CR 129. United States District Court Northern District of Illinois, Eastern Division. The United States of American vs. Hans Max Haupt. Indictment. Vio: Section 1, Title 18, United States Code (Treason). A true bill, Oscar L. Ewert, Foreman. Filed in open court this 25th day of February, A. D. 1944. Roy H. Johnson, Clerk.]

18 In United States District Court

[Title omitted.]

Order of continuance

Feb. 29, 1944.

This cause having come on for arraignment and plea and to set for trial comes the United States by the United States Attorney comes also the defendant Hans Max Haupt in his own proper person and by his counsel and on motion of the defendant by his counsel it is

Ordered that leave be and is hereby granted said defendant to plead or demur within ten days from this date and that this cause be and the same is hereby continued to March 10, 1944 for hearing on the defendants demurrer and for arraignment and plea and a copy of the indictment filed herein is delivered to the defendant in open Court and it is

Ordered that this cause be and the same is hereby set for trial on April 10, A. D. 1944.

20 In United States District Court

[Title omitted.]

Appearance

Filed March 1, 1944

I enter my appearance as attorney for Hans Max Haupt, defendant, in the above-entitled case.
Dated 3/1/1944.

PAUL A. F. WARNHOLTZ,
Address: R. 1018 at 111 W. Washington St.,
Ph. Rand 7657.

22 In United States District Court

[Title omitted.]

Answer to demurrer to the indictment

Filed March 9, 1944

Now comes J. Albert Woll, United States Attorney for the Northern District of Illinois, Eastern Division, and in answer to the demurrer to the indictment heretofore filed says:

1. That the indictment is not bad for improper joinder of offenses in one indictment, since the indictment charges but one offense, namely, the offense of treason against the United States, for the overt acts are merely indicia or evidences of that one offense and do not constitute distinct crimes in themselves. Overt Act No. 26 does not charge a conspiracy to commit the crime of treason but rather definitely charges an overt act of treason. In this relation, the overt act of treason as charged is practically identical with overt act No. 17, in the case of United States vs. Walter Otto Froehling, in which recently in this Court, the identical argument was made and overruled.

Overt Act No. 29, also definitely charges an overt act of treason, the fact that the overt act may incidentally also charge the violation of another statute, being merely incidental.

Overt Act No. 27, definitely charges a physical act done
23 with the purpose and intent of giving aid and comfort to Herbert Haupt in carrying out his mission in the United States as an agent of the Government of the German Reich. It further charges that such act was done with the intent of concealing evidence and information concerning his said mission, his activities and identity, for the purpose of aiding him in this

mission. It is clear that such an act constitutes an overt act of treason.

The same may be said of overt act No. 28, which contains similar allegations. These acts, clearly done as alleged for the purposes indicated, can be construed in no other way than acts in furtherance of giving aid and comfort to the enemies of the United States.

2. The indictment properly alleges the commission of the crime of treason, together with overt acts committed in pursuance of and carrying out of said crime.

Wherefore, the United States of America by J. Albert Woll, United States Attorney for the Northern District of Illinois, Eastern Division, prays that the demurrer to the indictment be overruled.

J. ALBERT WOLL,
United States Attorney.

24 In United States District Court
[Title Omitted.]

Petition for inquiry into the sanity of Hans Max Haupt, defendant

Filed March 10, 1944

To the Honorable Judge of said Court:

Now comes Paul A. F. Warnholtz, counsel for Hans Max Haupt, the defendant, and respectfully represents to this Honorable Court that he has reasonable grounds to believe the said defendant at this time to be *non compos mentis* to such an extent as makes it impossible for the defendant to either plead to the charges in this cause or to defend himself thereon.

Petitioner hereby informs this court that the defendant at all times since latter part of July, 1942, has apparently been unable to communicate to your petitioner an intelligent and connected statement of facts relating to the charges contained in the indictment herein, or relating to the similar charges contained in the indictment in the case of United States vs. Hans Max Haupt et al., now pending in this court as Case No. 33481; that the interviews which petitioner had at various times since July, 1942, with the defendant, Hans Max Haupt, disclosed an impairment of memory, which apparently made it impossible for said defendant to impart such knowledge on his part to petitioner regarding facts, as is essential towards representing the defendant as his counsel in the trial on the aforementioned charges.

25 Your petitioner further informs this Honorable Court, that he has reasonable grounds to believe that the said defendant attempted to commit suicide during the early part of

July 1942, while in a state of delirium, by severing or attempting to sever the veins at the wrists of one of his hands; that at the time of such attempted suicide the defendant was in the custody of agents of the Federal Bureau of Investigation and was being held by said agents in a basement cell of the Winnetka Police Jail; that thereupon the defendant was removed by said F. B. I. agents to some hospital, to petitioner unknown, and kept there for a period of several weeks, during all of which time the defendant was in a state of delirium;

That the defendant again attempted to commit suicide, by hanging himself, during the month of August 1942, or at about that time, while in the custody of the United States Marshall, and kept at the Cook County jail; and your petitioner further avers:

That the defendant has always disclaimed towards the petitioner any recollection whatsoever concerning such suicide attempts, but has often related to the petitioner, as actual happenings, occasions when a white bear and roaring lions entered the cell where the defendant was kept at the aforementioned Winnetka Police Jail, and has related various plots by inmates of the Cook County Jail to secretly kill and dismember the defendant and to smuggle out the various parts of his body, wrapped in newspaper; that the defendant has at various times made many other irrational statements to your petitioner, which your petitioner believes to be the result of a derangement of mind.

26 Your petitioner further avers that the defendant is apparently in a very poor state of health; that the defendant's weight in June 1942, is said to have been about 143 pounds, alleged to be his normal weight, and that his weight at the present time is about 119 pounds.

Wherefore, your petitioner, as attorney for the defendant herein, desires to submit the mental and physical condition of this defendant to this court for such examination by competent physicians and otherwise, as the court may deem best to make, in order to determine whether the defendant should at this time be required to plead and be subjected to trial herein.

(Signed) PAUL A. F. WARNHOLTZ,
Attorney for Hans Max Haupt, defendant.

27 [*Duly sworn to by Paul A. F. Warnholtz; jurat omitted in printing.*]

29 In United States District Court

[Title omitted.]

Order overruling demurrer, etc.

March 10, 1944

This cause having come on for hearing on the demurrer to the indictment heretofore filed herein come the parties by their counsel respectively and the appearance of the defendant for the purpose of arguments on the demurrer is waived by said counsel and the Court having heard the arguments of counsel and being fully advised in the premises it is

Ordered that said demurrer be and the same is hereby overruled to which ruling of the Court the defendant by his counsel duly excepts and on motion of counsel for the defendant it is

Further ordered that leave be and is hereby granted to file a petition for inquiry into the sanity of the defendant and that said petition is continued to March 14 A. D. 1944 for hearing.

31 In United States District Court

[Title omitted.]

Order for hearing

March 22, 1944

It is hereby ordered that on the 17th day of April 1944, this Court shall hold a hearing for the purpose of investigating the mental capacity of the accused, Hans Max Haupt, to understand the proceedings against him and rationally to advise with his counsel as to his defense, and for the purpose of assisting the Court in said investigation, Dr. Francis Gerty, Dr. Loren Avery, Dr. Harold S. Hulbert and Dr. Roland P. Mackay, be and they are hereby appointed to inquire into the present mental capacity of said Hans Max Haupt, in the respects aforesaid, and to inform themselves in respect thereof.

It is further ordered that each of the said physicians on or before the 13th day of April 1944 file with the Court a report in writing concerning his findings in the above respects, and that they be prepared to testify at the hearing at the date aforesaid with respect thereto.

BARNES,
United States District Judge.

Dated: Chicago, Illinois this 22nd day of March A. D. 1944.

33 In United States District Court

[Title omitted.]

Minute entry

April 17, 1944

This day comes the United States by the United States Attorney comes also the defendant Hans Max Haupt in his own proper person and by his counsel and this cause coming on for trial on the pleadings filed and the issues made up by the pleadings it is

Ordered that a Jury come whereupon comes a Jury of twelve good and lawful men and women to-wit: Grace Gamertsfeld, Howard C. Voorheis, James Craig, Vera H. Becker, Alice V. Lange, Dolores M. Quinn, Harriet Magro, Leo J. Janiga, Helen C. Rollins, Murray L. Schreyer, Lillian K. Miller, and Rufus Orr, who are duly elected, empaneled and sworn well and truly to try the issues joined in this cause and a true deliverance to make between the United States of America, plaintiff, and Hans Max Haupt, defendant, and a true verdict render according to law and the evidence and trial of this cause proceeds and during the examination of witnesses on behalf of the defendant the usual hour of adjournment having arrived

Ordered that the Jury be permitted to separate until April 18 A. D. 1944, at 10 o'clock A. M.

35 In United States District Court

[Title omitted.]

Order

April 19, 1944

This cause having come on to be heard upon the application of Paul A. F. Warmholtz, attorney for the defendant, asking for a hearing to determine the present mental condition of the said defendant, and the Court having heretofore ordered that Dr. Roland E. Mackay, Dr. Loren Avery, Dr. Francis Gerty, and Dr. Harold S. Hulbert, psychiatrists, examine the said defendant to determine whether the said defendant is, as of the present time, mentally capable of understanding the proceedings against him and rationally able to advise with his counsel as to his defense, and the said psychiatrists having reported their findings in writ-

ing to the Court; a jury was impaneled and sworn to try the above issues; and the said jury having heard the testimony of the said psychiatrists, and having heard evidence presented by both sides in addition to the findings of the said psychiatrists, the said jury then and there returned a verdict, finding that the said Hans Max Haupt is able to comprehend intelligently the nature of the proceedings against him and is able rationally to advise with his counsel as to his defense:

It is, therefore, the finding of this Court that the verdict of the jury in the above entitled cause is well warranted by the evidence, and that the said Hans Max Haupt is mentally capable of intelligently understanding the nature of the proceedings against him, and that he is capable of advising rationally with his counsel as to his defense:

36 It is, therefore, ordered that the said defendant having been found to be mentally capable of understanding the nature of the proceedings against him and rationally capable of advising with his counsel as to his defense, be immediately arraigned and plead to the indictment of this said cause; and the said defendant having upon arraignment duly entered his plea of not guilty to the charges in the indictment.

It is hereby ordered that this said cause be set for trial on the 15th day of May A. D. 1944.

BARNES, *Judge.*

Dated: Chicago, Illinois, this 19th day of April A. D. 1944.

38 In United States District Court

[Title omitted.]

Motion for leave to withdraw plea and to file motion to quash and dismiss indictment

Filed April 24, 1944

To the Honorable Judge of said Court:

Now comes Hans Max Haupt, defendant, by Paul A. F. Warnholtz, his attorney, and moves this Honorable Court, to enter an order herein giving leave to said defendant to withdraw his plea of not guilty heretofore entered herein and to instanter file his motion to quash and dismiss the indictment herein:

HANS MAX HAUPT.
By PAUL A. F. WARNHOLTZ,
his Attorney.

39 In United States District Court

[Title omitted.]

Notice of motion

To: J. Albert Woll, Esq.,
United States Attorney,
United States Court House,
Chicago, Illinois.

Please take notice that on Monday, the 24th day of April 1944, at the opening of Court in the forenoon, or as soon thereafter as counsel can be heard, I shall appear before His Honor, Judge John P. Barnes, or in his absence, before such other judge as may be hearing his motions, and shall move the Court for the entry of an order, giving leave to the defendant to withdraw his plea of not guilty herein, and to file instanter a motion to quash and dismiss the indictment herein.

A copy of said motion for leave to withdraw plea and of the motion to quash and dismiss is hereto attached and served upon you.

Paul A. F. Warnholtz,
Attorney for the Defendant.

Received a copy of the foregoing notice and motions therein mentioned this 22nd day of April A. D. 1944, before noon.

J. Albert Woll,
By Richard G. Finn.

41 In United States District Court

[Title omitted.]

Motion to quash and dismiss indictment

Filed April 24, 1944

To the Honorable Judge of said Court:

The defendant, by Paul A. F. Warnholtz, his attorney, respectfully moves the Court to quash and dismiss the indictment herein, and as reasons therefor shows the following:

That there is now a former indictment pending before his Honorable Court, entitled United States of America v. Hans Max Haupt, Erna Emma Haupt, Walter Otto Froehling, Lucille Froehling, Otto Richard Wergin, Kate Martha Wergin, case No. 33481, wherein this defendant is charged with the commission of the crime of treason; that a trial was had upon said indictment and that this defendant was found guilty, from which judgment this defendant appealed to the Honorable United States Circuit

Court of Appeals; that thereupon said Honorable United States Circuit Court of Appeals reversed said judgment and remanded the cause for a new trial, which has been set for January 17th, 1944, by this Honorable Court, and that the said indictment, case No. 33481, remains pending and undisposed of.

This defendant further shows that by order of this Court he is now being held without bail under said indictment in said case No. 33481.

This defendant further avers that the allegations of the crime of treason and the Overt Acts alleged in support thereof in
42 the said indictment in said case No. 33481 are substantially the same as the allegations of the crime of treason and the Overt Acts alleged in support thereof in the indictment herein and that the prosecution has failed and refused to enter a nolle prosse in the case No. 33481 as to this defendant.

This defendant further avers that an acquittal of the defendant herein would leave this defendant in the custody of the marshal pursuant to the order entered heretofore by this Honorable Court with reference to the indictment in said case No. 33481, holding this defendant without bail; and that the continued pendency of said case No. 33481 may subject this defendant to double prosecution for the same alleged offense, and otherwise embarrass this defendant in his rights.

Dated at Chicago, Illinois, on the 20th day of April 1944.

PAUL A. F. WARNHOLTZ,
Attorney for the Defendant.

43 [*Duly sworn to by Paul A. F. Warnholtz, jurat omitted in printing.*]

45 In United States District Court

[Title omitted.]

Order denying motion to quash and dismiss.

April 24, 1944

This day comes the United States by the United States Attorney comes also the defendant by his counsel and by leave of Court first had and obtained withdraws his plea of not guilty heretofore entered herein and files his motion to quash and dismiss the indictment and the Court being fully advised in the premises it is

Ordered that said motion to quash and dismiss the indictment be and the same is hereby denied to which ruling of the Court the defendant by his counsel fully excepts.

47 In United States District Court

[Title omitted.]

Notice of Motion

Filed April 24, 1944

To: J. Albert Woll, Esq.
United States Attorney,
United States Court House, Chicago, Illinois.

Please take notice that on Monday, the 24th day of April 1944, at the opening of Court in the forenoon, or as soon thereafter as counsel can be heard, I shall appear before His Honor, Judge John P. Barnes, or in his absence, before such other judge as may be hearing his motions, and shall move the Court for the entry of an order, directing the United States Attorney to serve and file a bill of particulars of the indictment herein, particularly setting forth the information requested in the written motion therefor, a copy whereof is hereto attached and served upon you.

Paul A. F. Warnholtz,
Attorney for the defendant.

Received a copy of the foregoing notice and motions therein mentioned this 22nd day of April A. D. 1944, before noon.

J. Albert Woll,
By Richard G. Finn.

48 In United States District Court

[Title omitted.]

Motion for bill of particulars

Filed April 24, 1944

To the Honorable Judge of said Court:

Now comes Hans Max Haupt, defendant, by Paul A. F. Warnholtz, his attorney, and moves for the entry of an order herein, directing the United States Attorney to serve and file a bill of particulars setting forth the following with reference to the overt acts mentioned in the indictment herein:

1. To state particularly what it is claimed that the defendant counseled and advised Herbert Haupt to do, at the time and place mentioned in overt act number one (1).

2. To state particularly what matters were discussed or conferred about between Herbert Haupt and the defendant and other persons, at the times and places mentioned in overt acts number four (4) and eight (8); and to state in what manner it is claimed that such matters allegedly so discussed and conferred about as-

sisted or would assist Herbert Haupt to carry out his mission as an agent of the German Reich.

3. To state what was done at the meeting referred to in overt act number seven (7) and in what manner it is claimed to have assisted Herbert Haupt in carrying out his
49 mission for the Government of the German Reich.

4. To state in what particular manner it is claimed that Herbert Haupt was or would have been assisted in securing employment for the purposes set forth in overt acts number ten (10) and eleven (11), by being accompanied by the defendant at such times.

5. To state particularly in what manner and by what acts of the defendant it is claimed that the defendant harbored and sheltered Herbert Haupt at the times and places mentioned in overt acts number (12), seventeen (17), twenty (20), twenty-one (21), twenty-two (22), and twenty-three (23).

6. To state particularly in what manner it is claimed that Herbert Haupt was or would have been assisted in carrying out his mission as an agent of the German Reich, by the purchase of an automobile, referred to in overt acts number thirteen (13), fourteen (14), fifteen (15), and sixteen (16).

7. To state the place or places of the occurrences mentioned in overt act number twenty-nine (29).

HANS MAX HAUPT,
Defendant.

By (Signed) PAUL A. F. WARNHOLTZ,
Attorney for defendant.

50 *Affidavit*

Paul A. F. Warnholtz, being first duly sworn, on oath states that he is the attorney for Hans Max Haupt, the defendant herein; affiant further states that the defendant's mental and physical condition is such, that the affiant cannot gain from him sufficient information and knowledge to enable affiant to properly prepare for the trial herein, with respect to the matters mentioned in the foregoing motion; and that he may be taken by surprise at the trial of this cause, unless the plaintiff gives the particulars requested in the foregoing motion therefor; affiant further states that he has personal knowledge of the facts alleged in this affidavit and that this motion is not being made for the purpose of delay.

(Signed) PAUL A. F. WARNHOLTZ,
Affiant.

Subscribed and sworn to before me this 21st day of April 1944.
[Notary Public Seal Affixed.]

(Signed) ROBERT CORDEAU,
Notary Public.

52 In United States District Court

[Title omitted.]

Order

April 24, 1944

This day comes the United States by the United States Attorney comes also the defendant and by his counsel enters herein his motion for a bill of particulars which motion is overruled and denied to which ruling of the Court the defendant by his counsel duly excepts.

54 In United States District Court

[Title omitted.]

Arraignment and plea

April 25, 1944

This day comes the United States by the United States Attorney comes also the defendant Hans Max Haupt in his own proper person and by his counsel and being arraigned upon the indictment filed herein against him pleads not guilty thereto and thereupon the United States Attorney in open Court furnishes the defendant with a copy of the indictment filed herein against him.

55 In United States District Court

[Title omitted.]

Motion for directed verdict at close of Government's evidence

June 2, 1944

56 And now at the conclusion of the Government's evidence in the case, comes the defendant, Hans Max Haupt, by Paul A. F. Warnholtz, his attorney, and moves the court to direct the jury to find this defendant not guilty of the charges contained in the indictment in the above entitled case;

And the defendant, Hans Max Haupt, makes the following separate and additional motions with respect to the specific overt acts charged in the said indictment:

The defendant, Hans Max Haupt, moves the Court to direct the jury to find this defendant not guilty upon each of the overt acts designated and separately numbered in said indictment as follows: "1", "2", "3", "4", "5", "6", "7", "8", "9", "10", "11", "12", "13", "14", "15", "16", "17", "18", "19", "20", "21", "22", "23", "24", "25", "26", "27", "28", "29."

And in support of all and each of the foregoing motions, and with respect to all and each of the said numbered overt acts in said indictment, this defendant shows unto the Court as follows:

1. There is no evidence in the case proving or tending to prove that this defendant has committed treason against the United States.

2. There is no evidence in the case that this defendant adhered to, or was guilty of adhering to, the enemies of the United States.

57 3. There is no evidence in the case that this defendant gave, or was guilty of giving, to the enemies of the United States aid and comfort.

4. There was not testimony of two witnesses to the same overt act of this defendant.

5. There was no confession in open Court by this defendant as to any overt act or charge contained in said indictment.

6. There is no evidence in the case that this defendant adhered to the enemies of the United States and gave said enemies aid and comfort.

7. There is no evidence in the case showing any intent on the part of this defendant to commit treason against the United States.

8. There is no evidence in the case that this defendant committed any of the acts alleged in the indictment as "overt acts" with intent to adhere to the enemies of the United States and to give said enemies aid and comfort, or with any intent to commit treason against the United States.

9. There is no evidence in the case that this defendant gave aid and comfort, if any aid and comfort was given, to more than one person, or to any person other than Herbert Haupt.

10. There is no evidence in the case that this defendant intended to or did give aid and comfort to Herbert Haupt, or in any other manner assisted the said Herbert Haupt, with the intention of thereby furthering the interests of any nation with which the United States was at war, or with the intention of committing any act detrimental to the interests of the United States.

Denied.

(Signed) PAUL A. F. WARNHOLTZ,
Attorney for Hans Max Haupt, defendant.

59 In United States District Court

[Title omitted.]

Motion to strike, etc.

Filed June 2, 1944

And now comes the defendant, Hans Max Haupt, by Paul A. F. Warnholtz, his attorney, and moves the Court to strike and exclude from the evidence in the case all testimony of all witnesses relating to conversations with Herbert Haupt and alleged statements made by Herbert Haupt outside of the presence of the defendant, upon the following grounds:

(a) All such testimony constitutes hearsay evidence which is inadmissible.

(b) Said Herbert Haupt died before the commencement of this trial and his alleged statements are inadmissible as evidence against this defendant who was not present when such alleged statements were made.

(c) All such testimony was incompetent, immaterial and irrelevant to the issues in the case.

And the defendant further moves the Court to instruct the jury that they are not to consider any such testimony relating to such conversations and alleged statements of Herbert Haupt.

Denied.

[Signed] PAUL A. F. WARNHOLTZ.
Attorney for said Defendant.

61 In United States District Court

[Title omitted.]

Motion to strike, etc.

Filed June 2, 1944

And now comes the defendant, Hans Max Haupt, by Paul A. F. Warnholtz, his attorney, and moves the Court to strike and exclude from the evidence in the case all testimony of witnesses for the prosecution relating to any statements alleged to have been made by the defendant herein prior to December 7th, 1941, upon the grounds that the United States was not then engaged in any war, and that all such testimony is irrelevant, incompetent and immaterial and relates to matters not involving the charges against the defendant contained in the indictment, and tends greatly to the prejudice of the rights and interests of the defendant and deprives him of the right to a fair and impartial trial herein;

And the defendant further moves the Court to instruct the jury that they are not to consider such irrelevant, incompetent, and immaterial testimony herein.

Denied.

[Signed] PAUL A. F. WARNHOLTZ,
Attorney for said Defendant.

63 In the United States District Court

[Title omitted.]

Motion to strike, etc.

Filed June 2, 1944

And now comes the defendant, Hans Max Haupt, by Paul A. F. Warnholtz, his attorney, and moves the Court to strike and exclude from the evidence in the case all testimony of witnesses for the prosecution relating to any statements alleged to have been made by the defendant herein prior to June 17th, 1942, upon the grounds that all such testimony is irrelevant, incompetent and immaterial and relates to matters not involving the charges against the defendant contained in the indictment, and tends greatly to the prejudice of the rights and interests of the defendant and deprives him of the right to a fair and impartial trial herein;

And the defendant further moves the Court to instruct the jury that they are not to consider such irrelevant, incompetent, and immaterial testimony herein.

Denied.

(Signed) PAUL A. F. WARNHOLTZ,
Attorney for the Defendant,

65 In United States District Court

[Title omitted.]

Motion to strike, etc.

Filed June 2, 1944

And now comes the defendant, Hans Max Haupt, by Paul A. F. Warnholtz, his attorney, and moves the Court to strike and exclude from the evidence in the case all testimony of witnesses for the prosecution relating to matters involving activities of Herbert Haupt, which occurred prior to the middle of June, 1941, upon the grounds that the same is irrelevant, incompetent, and immaterial, and relates to matters not involving the charges against the defendant contained in the indictment, tending to the great

prejudice of the rights and interests of the defendant and deprives him of the right to a fair and impartial trial herein;

And the defendant further moves the Court to instruct the jury that they are not to consider such testimony relating to activities of said Herbert Haupt which occurred prior to the middle of June 1941.

Denied.

(Signed) PAUL A. F. WARNHOLTZ,
Attorney for said Defendant.

67 In United States District Court

[Title omitted.]

Minute entry

June 2, 1944

This being the day to which this cause was continued for further trial again comes the United States by the United States Attorney comes also the defendant Hans Max Haupt in his own proper person and by his counsel and the Jury and Alternate Jurors heretofore elected, empaneled and sworn herein for the trial of this cause also come and trial of this cause proceeds and at the close of the evidence for the Government the defendant by his counsel enters herein his motions for a directed verdict to strike and exclude certain testimony re conversations with Herbert Haupt, to strike and exclude all testimony re statements alleged to have been made by the defendant prior to June 17 A. D. 1942, to strike and exclude certain testimony re matters involving the activities of Herbert Haupt which occurred prior to the middle of June 1941 which motions are overruled and denied and during the examination of witnesses for the defendant the hour of adjournment having arrived it is

Ordered that the Jury and Alternate Jurors be permitted to separate until June 5 A. D. 1944 at 10 O'clock A. M.

68 In United States District Court

[Title omitted.]

Motion for directed verdict at close of all evidence

Filed June 2, 1944

69 And now at the conclusion of all of the evidence in the case, comes the defendant, Hans Max Haupt, by Paul A. F. Warnholtz, and moves the court to direct the jury to find this defendant not guilty of the charges contained in the indictment in the above entitled case;

And the defendant, Hans Max Haupt, makes the following separate and additional motions with respect to the specific overt acts charged in the said indictment:

The defendant, Hans Max Haupt, moves the Court to direct the jury to find this defendant not guilty upon each of the overt acts designated and separately numbered in said indictment as follows: "1," "2," "3," "4," "5," "6," "7," "8," "9," "10," "11," "12," "13," "14," "15," "16," "17," "18," "19," "20," "21," "22," "23," "24," "25," "26," "27," "28," "29."

And in support of all and each of the foregoing motions, and with respect to all and each of the said numbered overt acts in said indictment, this defendant shows unto the Court as follows:

1. There is no evidence in the case proving or tending to prove that this defendant has committed treason against the United States.

2. There is no evidence in the case that this defendant adhered to, or was guilty of adhering to, the enemies of the United States.

3. There is no evidence in the case that this defendant gave, or was guilty of giving, to the enemies of the United States aid and comfort.

4. There was not testimony of two witnesses to the same overt act of this defendant.

5. There was no confession in open Court by this defendant as to any overt act or charge contained in said indictment.

6. There is no evidence in the case that this defendant adhered to the enemies of the United States and gave said enemies aid and comfort.

7. There is no evidence in the cash showing any intent on the part of this defendant to commit treason against the United States.

8. There is no evidence in the case that this defendant committed any of the acts alleged in the indictment as "overt acts" with intent to adhere to the enemies of the United States and to give said enemies aid and comfort, or with any intent to commit treason against the United States.

9. There is no evidence in the case that this defendant gave aid and comfort, if any aid and comfort was given, to more than one person, or to any person other than Herbert Haupt.

10. There is no evidence in the case that this defendant intended to or did give aid and comfort to Herbert Haupt, or in any other manner assisted the said Herbert Haupt, with the intention of thereby furthering the interests of any nation with which the United States was at war, or with the intention of committing any act detrimental to the interests of the United States.

Denied.

PAUL A. F. WARNHOLTZ,
Attorney for Hans Max Haupt, defendant.

72 In United States District Court

[Title omitted.]

Minute entry

June 5, 1944

This being the day to which this cause was continued for further trial again comes the United States by the United States Attorney comes also the defendant Hans Max Haupt in his own proper person and by his counsel and the Jury and Alternate Jurors heretofore elected, empaneled and sworn herein for the trial of this cause also come and trial of this cause proceeds and at the close of all the evidence the defendant by his counsel renews four motions to strike and exclude certain testimony heretofore made at the close of the plaintiff's case which motions are overruled and denied to which ruling of the Court the defendant duly excepts whereupon the defendant by his counsel enters herein his motion for a directed verdict and after arguments of counsel and due deliberation by the Court said motion is overruled and denied to which ruling of the Court the defendant duly excepts and the hour of adjournment having arrived it is

Ordered that the Jury and Alternate Jurors be permitted to separate until June 6 A. D. 1944 at 10 o'clock A. M.

74 In United States District Court

[Title omitted.]

Notice of demurrer

Filed March 6, 1944

To: J. ALBERT WOLL, Esq.
United States Attorney,
United States Court House.

Please take notice that I am filing today with the Clerk of this Court a demurrer to the indictment herein.

Further, please take notice that I am filing today with the Secretary of His Honor, Judge John P. Barnes, a brief in support of said demurrer.

A copy of said demurrer and brief is hereto attached and served upon you.

PAUL A. F. WARNHOLTZ,
Attorney for the defendant.

Received this 6th day of March 1944, a copy of the foregoing notice and of the demurrer and brief therein mentioned.

J. ALBERT WOLL.

75 In United States District Court

[Title omitted.]

Demurrer to the indictment

Filed March 6, 1944

Hans Max Haupt, the defendant herein, by Paul A. F. Warnholtz, his attorney, demurs to the indictment herein upon the following grounds:

1. That the indictment is bad for improper joinder of offenses in one indictment, and for duplicity, in that it charges the defendant in one indictment and in a single count thereof with the commission of twenty-nine separate and distinct acts, each one thereof allegedly constituting a crime; and further in this that some of said separate and distinct acts are of the same class of crimes or offenses, and some are of different classes of crimes or offenses, and punishable by different penalties, to wit:

Overt Acts Numbered 1 to 25, both inclusive, attempt to charge the commission of twenty-five distinct acts of the crime of treason, punishable under Section 2 of Title 18, U. S. C. by death, or at the discretion of the Court by imprisonment of not less than five years and a fine of not less than $10,000;

Overt Act Number 26 charges in fact a conspiracy by and between the defendant and other persons, to commit the crime
76 of treason, punishable under Section 34, Title 50, U. S. C. and/or under Section 88, Title 18, U. S. C. by a fine of not more than $10,000 or imprisonment for not more than two years or both;

Overt Act Number 29 charges in fact a violation of the Espionage Act, as defined by Section 33 of Title 50, U. S. C., punishable under said section by a fine of not more than $10,000, or imprisonment for not more than twenty years, or both.

Overt Acts Numbered 27 and 28 do not charge a violation of any known crime, and are not subject to any punishment whatsoever.

2. That the alleged offenses and each of them set forth in said indictment and charged to have been committed by this defendant, do not constitute acts of treason within the meaning of and as defined by the Constitution of the United States of America, and as stated in Section 1, Title 18, U. S. C.

Wherefore, this defendant prays judgment dismissing the indictment and discharging him from custody.

PAUL A. F. WARNHOLTZ,
Attorney for the defendant.

Paul A. F. Warnholtz, 111 West Washington Street, Chicago, Illinois. Tel: Randolph 7657.

702594—46—3

77-A In United States District Court

[Title omitted.]

Appearance

Filed June 7, 1944

I enter my appearance as associate counsel for the defendant, as of the commencement date of the trial in the above-entitled case.
Dated June 7th 1944.

FREDERICK J. BERTRAM,
Address: 111 W. Washington St.,
Chicago, Ill.

78 In United States District Court

[Title omitted.]

Minute entry

June 8, 1944

This being the day to which this cause was continued for further trial again comes the United States by the United States Attorney comes also the defendant Hans Max Haupt in his own proper person and by his counsel and the Jury and Alternate Jurors heretofore elected, empaneled and sworn herein for the trial of this cause also come and the Jury now having heard all the evidence addduced by the parties, arguments of counsel and instructions of the Court it is

Ordered that Mrs. Zilia Rose Bennett and Joseph J. Bacchiere be and they are hereby discharged as Alternate Jurors in this cause and the Jury retire to their rooms with sworn Marshals to consider of their verdict.

80 In United States District Court

No. 44 Cr. 129

THE UNITED STATES OF AMERICA

vs.

HANS MAX HAUPT

Charge to jury

Filed June 9, 1944

Ladies and Gentlemen of the Jury:

1. It is the duty of the court to deliver to you instructions for your guidance in the consideration of the evidence and in your deliberations upon this case.

2. The instructions which the court will give you, in so far as they pertain to the principles of law applicable to the case, must be accepted by you as a binding control and guide in your consideration of the evidence and in your deliberations.

3. The responsibility rests upon you to determine the facts of this case, under the law as the court may give it to you, uninfluenced by any expression of opinion that the court has made or may hereafter make upon matters of fact. The court has not intended at any time during the trial of this case, and does not intent at any time, to express any opinion on any matter of fact, and if the court has expressed or does express any opinion on any matter of fact you are at liberty to disregard such opinion, and it is your duty to disregard it, if it is different from your own opinion.

4. Your verdict in this case must be reached from a consideration of all the evidence in the case, but if any evidence was admitted and was later stricken out, you must wholly disregard such evidence as was striken out.

5. During the trial of a law suit it often becomes the duty of counsel for the parties to object to questions, or to evidence, and I instruct you that you shall not take into consideration against such party either such objections or the number of them, nor permit yourselves to be in any way influenced by such objections against the parties.

6. This is a criminal case, and the law in such cases is that a defendant comes into court presumed to be innocent, and that presumption protects him until such time, if such time shall come, when the jury shall believe from the evidence in the case, beyond a reasonable doubt, that the defendant is guilty as charged in the indictment.

7. The guilt of an accused is not to be inferred because the facts proven are consistent with his guilt, but, on the contrary, before there can be a verdict of guilty you must believe from all the evidence, and beyond a reasonable doubt, that the facts proven are inconsistent with his innocence. If two conclusions can reasonably be drawn from the evidence, one of innocence and one of guilt, you should adopt the former.

8. The defendant on trial has pleaded not guilty. This puts the burden of proving the charges in the indictment upon the Government, and you cannot find the defendant guilty unless, from all the evidence, you believe him guilty of the offense charged in the indictment beyond a reasonable doubt.

9. A reasonable doubt is what the term implies,—a doubt founded on reason. It does not mean every conceivable kind of doubt. It does not mean a doubt that may be purely imaginary or fanciful, or one that is merely captious or speculative. It

means, simply, an honest doubt that appeals to reason and is founded upon reason. If, after considering all the evidence in the case, you have such a doubt in your mind as would cause
81 you, or any other reasonably prudent person, to pause or hesitate before acting in a grave transaction of your own life, then you have such a doubt as the law contemplates as a reasonable doubt.

10. You are the sole judges of the credibility, and the weight which is to be given to the testimony, of the witnesses who have testified upon this trial. In weighing the testimony of each witness you should carefully scrutinize the same; consider all the circumstances under which the witness testifies; his demeanor on the stand; the relation which he bears to the Government or the defendant; the manner in which he might be affected by the verdict; the extent to which he is corroborated or contradicted by other credible evidence, and, in short, any circumstances that tend to throw light upon his credibility. And, applying these tests which I have just stated, it is for you to determine the weight which is to be given to the testimony of each witness.

11. If you believe from the evidence that any witness in this case has knowingly and wilfully testified falsely on this trial to any matter material to the issues in this case, as I shall define them to you in these instructions, you are at liberty to disregard the entire testimony of such witness, except insofar as it has been corroborated, if you find it has been corroborated, by other credible evidence or by facts and circumstances proven on the trial.

12. You should not allow either sympathy for the defendant or prejudice against him to influence your deliberations. You should not be influenced by anything other than the law and the evidence in the case. You must also disregard anything that you may have heard from others than witnesses or read in the newspapers concerning the case.

13. Certain witnesses who have testified in this proceeding have admitted that they have been convicted of felonies. Proof of conviction of a witness of a felony is evidence tending to impeach his credibility, and, in determining the weight which the jury should attach to such witness's testimony, the jury have a right to take into consideration the fact that the witness has been convicted of a felony. You have heard the testimony of these witnesses and observed them while testifying. The fact that a witness has been convicted of a felony does not mean that he cannot tell the truth. You should weigh the testimony of such a witness by the same rules that you would weigh the testimony of any other witness. But the fact that a witness has been convicted of a felony may be considered by you in determining the credibility of such a witness.

14. The fact that an indictment has been returned is not evidence; nor is the indictment evidence; and neither the indictment nor the return thereof should be considered by you as any evidence of the guilt of the defendant. Neither should the indictment be treated by you as raising any kind of presumption or creating any kind of prejudice against the defendant. The indictment is simply the form or manner prescribed by law for preferring a charge against an individual, and must be regarded in that light, and in no other light.

15. You must consider each of the statements which I make to you not merely by itself, but as related to all other points covered by the charge. In other words, you must consider my charge as a whole.

16. The paragraphs of these instructions have been numbered for the convenience of the court and counsel but the numberings do not in any way limit my charge that the instructions shall be considered as one whole.

82. 17. Preliminary to your being sworn to act as jurors in this case you were examined by counsel as to your competency and qualifications to act as jurors in this case. As part of such examination each of you answered all questions put to you by counsel for the prosecution and for the defendant. Your answers showed that you were competent and qualified to act as jurors and the parties to this case accepted you as jurors on their faith in the truth of your answers. The answers you then made to such questions in regard to your competency, qualifications, fairness, and lack of prejudice are as binding upon you now as they were then, and should so remain until you are finally discharged from further consideration of this case. It would be improper and unlawful for any of you to disregard the answers that rendered you competent jurors.

18. The defendant in this case, Hans Max Haupt, is charged by an indictment returned by a grand jury in this District on February 25, 1944, with the crime of treason.

19. The definition of treason in the Constitution of the United States is as follows: "Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort."

20. The definition of treason in the statutes of the United States is as follows: "Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason."

20-a. The indictment in this case does not charge a levying of war against the United States. It does charge an adhering to the enemies of the United States, giving them aid and comfort.

21. The indictment in this case alleges that Hans Max Haupt, at Chicago, in the Eastern Division of the Northern District of Illinois, continuously and at all times from June 17, 1942, to and including July 17, 1942, being a person owing allegiance to the United States—in violation of said duty of allegiance, did unlawfully, feloniously, maliciously, intentionally, traitorously and treasonably adhere to the enemies of the United States, that is, to the Government of the German Reich, its counselors, armies, navies, agents, representatives and subjects, with which the United States, at all times since December 11, 1941, has been at war, and did give to said enemies aid and comfort.

22. The indictment further alleges that Hans Max Haupt has been a citizen of the United States since 1930, and a resident thereof since 1923.

23. The indictment further charges that one Herbert Haupt, an agent and representative of the German Reich, came into the United States on or about June 17, 1942, and during the period of time above mentioned, namely, June 17, 1942, to July 17, 1942, served the German Reich as a secret agent, saboteur and spy, in carrying on its war with the United States, which service to the German Reich involved the destruction of certain war materials, premises and utilities of the United States, the disbursement of money, received from the German Reich in connection with
83 the procurement, manufacture, and use of explosive substances and sabotage devices for and in the destruction of the war material, premises and utilities of the United States, and the recruiting and hiring of persons to engage in unlawful and hostile enterprises consisting in the use of said explosives and sabotage devices to destroy the war materials, premises and utilities of the United States.

24. The indictment further charges that the service of Herbert Haupt also involved the securing of information, and the employment of other persons so to do, concerning the national defense of the United States and the mental attitude of its citizens toward the war and the German Reich, and transmitting such information to the German Reich to assist it in carrying on its war against the United States.

25. The indictment further alleges that said service of Herbert Haupt also involved the making and conveying of false statements and reports within the United States, and the employment of other persons so to do, with intent to interfere with the operation and success of the military and naval forces of the United States, to the advantage of the German Reich. And said service of Herbert Haupt also involved his remaining within the United States for further orders from the German Reich pertaining to said service.

26. The indictment charges that the adherence of the defendant Hans Max Haupt, to the German Reich, its counselors, armies, navies, agents, representatives and subjects, and said giving of aid and comfort by him consisted in his receiving, harboring, relieving and assisting Herbert Haupt in transporting him by automobile and in his furnishing hospitality to Herbert Haupt from June 17, 1942, to July 17, 1942, in his aiding, abetting, meeting with, assisting, counseling and advising Herbert Haupt concerning the service of said Herbert Haupt to the German Reich; in his countenancing said service; in his carrying out requests and instructions of said Herbert Haupt in connection with said service; in his purchasing an automobile for said Herbert Haupt; in his attempting to procure employment for said Herbert Haupt; in his giving false information regarding and concealing the identity of Herbert Haupt, as a representative of the German Reich and the mission of Herbert Haupt, in the United States; in his receiving, holding, possessing, safeguarding and concealing the property and funds of said Herbert Haupt, and in misrepresenting and concealing the ownership of said property and funds, and in his maintaining, harboring, feeding and supporting said Herbert Haupt throughout said period of time.

27. It is further alleged that the defendant, Hans Max Haupt, when so adhering and giving aid and comfort to the German Reich, its counselors, armies, navies, agents, representatives and subjects, well knew all the matters heretofore set forth in the indictment, and well knew the character of said service of Herbert Haupt to the German Reich, and intended to and did adhere to said enemies and gave them aid and comfort.

28. It is further alleged in the indictment that the defendant, in the prosecution, performance and execution of said treason, and with the intention of adhering to said enemies and giving them aid and comfort did do, perform and commit certain overt and manifest acts. The indictment then enumerates certain alleged overt acts.

29. It has been proved that the defendant, Hans Max Haupt, is and since 1930 has been a naturalized citizen of the United States, and, accordingly, he was, at the times mentioned in the indictment, a person owing allegiance to the United States.

30. It has also been proved, that, at the times mentioned in the indictment, namely, from June 17, 1942, to and including July 17, 1942, there existed a state of war betwsen the United States and the German Reich, and, therefore, the German Reich, the subjects, members of the military and naval forces of the German Reich, and all persons engaged by or working for that government, as agents, spies or saboteurs to assist that government in the prosecution of its war or to hamper the United States in the pros-

ecution of our war against the German Reich were enemies of the United States.

31. Every citizen of the United States, whether by birth or by naturalization, as a matter of law owes a duty of allegiance to the United States and continues to owe this duty of allegiance at all times, though he may have been born in another country with which this country is at war.

32. Although not explicity set forth in either the constitutional or statutory provisions, an intent to adhere and to give aid and comfort to the enemy is an essential element of the crime of treason. Without such intent to adhere and to give aid and comfort to the enemy, there is no treason.

84 33. When a state of war exists any act, done deliberately and intentionally, and with treasonable intent as hereinbefore defined by one owing allegiance to the United States which, by fair construction, is directed toward the furtherance of the hostile designs of the enemies of the United States and gives them aid and comfort (or if that is the natural effect of the act) is treasonable in its character.

34. The words in the United States statute "adheres to their enemies, giving them aid and comfort," and words of similar import in the Constitution mean in general any intentional act done with treasonable intent as heretofore defined by one owing allegiance to the United States which clearly indicates a want of loyalty to the United States and a sympathy with its enemies and which, by fair construction, is directly and intentionally done in furtherance of the hostile designs of the enemy, or to strengthen the enemy, or weaken the power of the United States to resist or attack the enemy.

35. Regardless of any blood relationship which may have existed between Herbert Haupt and Hans Max Haupt, if you find that the natural effect or consequence of any act or acts performed by Hans Max Haupt as alleged in the indictment and submitted to your consideration, if any were performed, was to give aid and comfort to Herbert Haupt in his capacity as an enemy agent, and that such act or acts were performed intentionally with knowledge of the fact that he was an enemy agent and with treasonable intent as hereinbefore defined then such act or acts were treasonable in character.

36. Applying these general principles to this case, if you find from the evidence beyond a reasonable doubt that during the period from June 17, 1942, to and including July 17, 1942, Herbert Haupt was an agent of the government of the German Reich, or an enemy saboteur, and that he was engaged with or working for the government of the German Reich to assist that government in

the prosecution of its war against the United States, or to hamper the United States in the prosecution of its war against Germany, and that the defendant knew that Herbert Haupt was an enemy agent or saboteur as aforesaid, and with such knowledge adhered to said Herbert Haupt as an enemy agent and with treasonable intent, as hereinbefore defined, gave him aid and comfort as such enemy as alleged in the indictment, then you may find that such defendant intended to adhere to the enemies of the United States and give aid and comfort to them.

37. If you are not satisfied, beyond a reasonable doubt, that the defendant's intention and purpose in acting as he did was evil, that is, if you are not satisfied beyond a reasonable doubt that the defendant intended to aid and comfort the enemies of the United States the defendant must be found not guilty. If you believe the defendant's intention in doing what he did during the period from June 17, 1942, to and including July 17, 1942, was not in any way to injure the United States but merely to assist his son, Herbert Haupt, as an individual, as distinguished from assisting him in his purposes, if such existed, of aiding the German Reich, or of injuring the United States, the defendant must be found not guilty.

38. A person cannot be convicted of treason merely for having the intention in his own mind to adhere to and give aid and comfort to the enemy. This intention must be manifested by what is termed an "overt Act."

39. An "overt Act", in criminal law, is an outward act done in pursuance and manifestation of a criminal intent or design, or more simply an act performed for the object of carrying out a criminal purpose.

40. An overt act has been defined by high authority as follows: "An overt act" is such an act as manifests a criminal intention and tends towards the accomplishment of the criminal object."

41. An overt act in itself may be a perfectly innocent act, standing by itself; but it must be in some manner in furtherance of the crime.

42. The constitution of the United States provides that: "No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act."

43. It is, therefore, necessary before the defendant can be found guilty of the crime charged against him in this case for the Government to establish beyond a reasonable doubt not only that the defendant intentionally, traitorously and treasonably adhered to and gave aid and comfort to the enemy, as alleged in the indictment, but also that the said defendant in furtherance of said alleged adherence and alleged giving of aid and comfort, intentionally

and treasonably performed at least one of the alleged overt acts submitted to your consideration by the court in these instructions and that the said overt act has been established beyond a reasonable doubt by the testimony of two direct witnesses to the same act.

44. Unless the Government has established, beyond a reasonable doubt not only that the defendant intentionally, traitorously, and treasonably adhered to and gave aid and comfort to the enemy, as alleged in the indictment, but also, that the said defendant, in furtherance of said alleged adherence and the alleged giving of aid and comfort, intentionally and treasonably performed at least one of the alleged overt acts submitted to your consideration by the court in these instructions, and has also established said overt act beyond a reasonable doubt by the testimony of two direct witnesses to the same act, you will find the defendant not guilty.

45. By the term "witnesses," used in this connection the Court does not mean persons who testify to admissions, if any, purportedly made by the defendant before the commencement of this trial. Neither admissions, if you believe any were made by the defendant, nor persons who took the stand to testify to such admissions, if any, are "witnesses" within the meaning of the foregoing provision of the Constitution, and neither such admissions, if any, nor any persons testifying to them, if any, can be considered by the jury as a substitute for the Constitutional requirement.

46. One may not of course be convicted of treason upon evidence of an overt act, unless such act has been charged in the indictment.

47. The Court is submitting to your consideration as possible overt acts of treason, the following alleged acts, charged in the indictment.

10. Said Hans Max Haupt, on or about June 22, 1942, accompanied said enemy, Herbert Haupt, to the home of Andreas Conrad Grunau, 6361 Leoti Ave., Chicago, Illinois, for the purpose of assisting the said Herbert Haupt in securing employment so that the said enemy might conceal his identity and mission as an agent of the German Reich and be permitted and enabled to carry out and pursue his said mission.

11. Said Hans Max Haupt, on or about June 22, 1942, accompanied the said Herbert Haupt to the home of Heinrich Koch, 7240 N. Odell Ave., Chicago, Illinois, for the purpose of further assisting said enemy in procuring employment, so that he might conceal his identity and mission as an agent of the Government of the German Reich and be permitted and enabled to carry out and pursue his said mission.

12. Said Hans Max Haupt, on or about June 22, 1942, harbored and sheltered the said enemy Herbert Haupt at the home of Hans Max Haupt and Erna Haupt, 2234 N. Freemont St., Chicago, Illi-

nois, well knowing that the said enemy was an agent of the Government of the German Reich in the United States to commit sabotage, act as a spy and perform other services for said Government as aforesaid, all with the intent and for the purpose of assisting said enemy Herbert Haupt, in carrying out his mission as an agent of the Government of the German Reich as aforesaid.

13. Said Hans Max Haupt, on or about June 23, 1942, accompanied the said enemy Herbert Haupt to the Warner
86 Motor Sales, 958 Diversey Park Way, Chicago, Illinois, to arrange for the purchase of an automobile for the said enemy Herbert Haupt, with the purpose and intent of assisting the said enemy in carrying out his mission as an agent of the Government of the German Reich as aforesaid.

14. Said Hans Max Haupt on or about the 23rd day of June 1942, while at the Warner Motor Sales, 958 Diversey Park Way, Chicago, Illinois, signed a financial statement and an order for the purchase of an automobile and made an initial payment of money toward the purchase of said automobile, with the intent and for the purpose of procuring an automobile for the said enemy, Herbert Haupt, and with the intent and for the purpose of assisting the said enemy, Herbert Haupt, to carry out his mission as an agent of the Government of the German Reich, as aforesaid, and to conceal the identity of Herbert Haupt as such agent.

15. Said Hans Max Haupt on or about June 24, 1942, again accompanied the said enemy Herbert Haupt to the Warner Motor Sales, 958 Diversey Park Way, Chicago, Illinois, to complete the arrangements for the purchase of an automobile for the said enemy with the intent and purpose of assisting said enemy in carrying out his mission as an agent of the Government of the German Reich, as aforesaid.

16. Said Hans Max Haupt on or about the 24th day of June, 1942, while at the Warner Motor Sales, 958 Diversey Parkway, Chicago, Illinois, made a further payment in cash toward the purchase of an automobile for said enemy Herbert Haupt and completed arrangements for the purchase of said automobile and did purchase said automobile for said enemy Herbert Haupt with the intent and for the purpose of assisting said enemy Herbert Haupt in carrying out his mission as an agent of the Government of the German Reich, as aforesaid.

17. Said Hans Max Haupt, on or about June 23, 1942, harbored and sheltered the said enemy Herbert Haupt at the home of Hans Max Haupt, 2234 N. Freemont St., Chicago, Illinois, well knowing that the said enemy was an agent of the Government of the German Reich in the United States to commit sabotage; act as a spy and an enemy agent and per[illegible]m other services for said Government as aforesaid, all with the intent and for the purpose of assist-

ing said enemy Herbert Haupt in carrying out his mission as an agent of the Government of the German Reich as aforesaid.

87 20. Said Hans Max Haupt, on or about June 24, 1942, harbored and sheltered the said enemy Herbert Haupt in his home at 2234 N. Freemont St., Chicago, Illinois, well knowing that said Herbert Haupt was an agent of the Government of the German Reich in the United States to commit sabotage, act as a spy and enemy agent and perform other services for said Government as aforesaid, all with the intent and for the purpose of assisting said enemy Herbert Haupt in carrying out his mission as an agent of the Government of the German Reich as aforesaid.

21. Said Hans Max Haupt, on or about June 25, 1942, harbored and sheltered the said enemy said Herbert Haupt in the home of Hans Max Haupt and Erna Haupt, 2234 N. Freemont St., Chicago, Illinois, well knowing that the said Herbert Haupt was an agent of the Government of the German Reich in the United States to commit sabotage, act as a spy and enemy agent and perform other services for said Government as aforesaid, all with the intent and for the purpose of assisting said enemy Herbert Haupt in carrying out his mission as an agent of the Government of the German Reich as aforesaid.

22. Said Hans Max Haupt, on or about June 26, 1942, harbored and sheltered the said enemy Herbert Haupt in his home at 2234 N. Freemont St., Chicago, Illinois, well knowing that said Herbert Haupt was an agent of the Government of the German Reich in the United States to commit sabotage, act as a spy and enemy agent and perform other services for said Government as aforesaid, all with the intent and for the purpose of assisting said enemy Herbert Haupt in carrying out his mission as an agent of the Government of the German Reich as aforesaid.

23. Said Hans Max Haupt, on or about June 27, 1942, harbored and sheltered the said enemy Herbert Haupt in his home at 2234 N. Freemont St., Chicago, Illinois, well knowing that said Herbert Haupt was an agent of the Government of the German Reich in the United States to commit sabotage, act as a spy and enemy and perform other services for said Government as aforesaid, all with the intent and for the purpose of assisting said enemy Herbert Haupt in carrying out his mission as an agent of the Government of the German Reich as aforesaid.

83 48. By submitting the alleged overt acts above read to your consideration, however, this court does not mean to intimate or infer in any way, either its belief or disbelief that any alleged overt acts of treason have been committed by this defendant, or that any overt acts of treason have been proven by the required two witnesses. Under the law, you are the sole judge of the facts and you alone can determine the factual issues in-

cluding the question of whether this defendant committed any act or acts of treason and whether any such act was proven beyond a reasonable doubt by two direct witnesses to the same overt act.

49. Since the law requires that there shall be no conviction of treason unless there are two direct witnesses to the same overt act, all the other alleged overt acts charged in this indictment are hereby withdrawn from your consideration as overt acts of treason, for even if you believe beyond a reasonable doubt they were performed, they may not in themselves be made the basis of a conviction under the Constitution. However, if you believe beyond a reasonable doubt that the defendant did actually perform any of these other alleged overt acts which were not proven to the degree required by the Constitution, you may consider any such act in determining the question of the intent with which the defendant may have performed, if you find beyond a reasonable doubt he did perform, any of the above alleged overt acts submitted to your consideration and not withdrawn, and which other possible overt acts, not withdrawn, you find from all of the evidence are proven beyond a reasonable doubt by two direct witnesses to the same overt act.

50. If you believe from the evidence beyond a reasonable doubt that Herbert Haupt, as alleged in the indictment, was an enemy agent, spy or saboteur and that he came into the United States on a mission for the German Reich and was acting as such agent, spy or saboteur on such mission while here, and that the defendant, Hans Max Haupt, knowing that he was such agent, spy or saboteur, unlawfully, feloniously maliciously, intentionally, traitorously, and treasonably and with treasonable intent as hereinbefore defined did adhere to and give aid and comfort to the said Herbert Haupt as an enemy, all as alleged in the indictment, and that in furtherance of or in carrying out said alleged adherence and giving of aid and comfort, Hans Max Haupt with treasonable intent performed any one of the above alleged overt acts submitted to your consideration and that two direct witnesses have testified to such act, then you may find the defendant guilty. Otherwise you must find the defendant not guilty.

51. It is not necessary for the government to prove by two witnesses the performance of more than one of the submitted overt acts, providing, of course, the other elements of the alleged crime are proven beyond a reasonable doubt as heretofore defined in these instructions.

52. The success or failure of any alleged mission upon which Herbert Haupt may have been engaged, if you believe beyond a reasonable doubt that he was engaged during the period from June 17, 1942 to July 17, 1942 on a mission for the German govern-

ment, is immaterial to the issues in this case and should be disregarded by you in your deliberations.

53. As I have heretofore stated to you the treasonable intent of the defendant is an essential element of the crime charged herein, and before you can find the defendant guilty you must find beyond a reasonable doubt, not only that such defendant adhered to the enemies of the United States, giving them aid and comfort, but also that at the time of such alleged adherence and giving of aid and comfort, the defendant intended to do so. This does not mean, however, that you must find that the defendant went through any specific mental process as a result of which he was conscious of the specific thought, "I am going to commit treason". This is not necessary, for every man in law is presumed to intend the natural and probable consequences of his acts if they are deliberately done. Anyone who is conscious of his acts and his surroundings and knowingly commits certain acts must be regarded as intending the natural and probable consequences of those acts. These observations are, of course, not intended to cast any inferences one way or another on the defendant's intent.

54. In this regard, motive should not be confused with intent. If a person knowingly and deliberately adheres to and gives aid and comfort to one whom he knows to be an enemy, then he must, in law, be taken to intend the natural and probable consequences of his own deliberate act, and the fact that his motive may not have been to aid the enemy is no defense. In other words, one cannot do an act which he knows will give aid and comfort to a person he knows to be an enemy of the United States and then seek to disclaim criminal and treasonable intent by saying that his motive was not to aid the enemy. So if you believe from the evidence beyond a reasonable doubt that the defendant as alleged in the indictment, performed one or more of the overt acts submitted to your consideration and that that act or those acts were of such a nature that the natural and probable consequence of heir performance was to give aid and comfort to the enemy, and if you further believe that the defendant performed such act or acts deliberately with knowledge that Herbert Haupt was an enemy agent, if you find that he was, then you may find that the defendant had the criminal and treasonable intent, since he intended to do the act forbidden by the law. Under such circumstances, the fact that you may also believe that his motive in so doing, if you find that he did, was for example, to help his son, would not in such event, change the fact that he had a criminal and treasonable intent.

55. While it is necessary that the government prove treasonable intent beyond a reasonable doubt, it is not necessary to warrant a conviction under the Constitution, that this intent be so established

by the testimony of two witnesses; neither is it necessary that this intent be so proven by direct evidence, as such intent may be so proven either by direct or circumstantial evidence. Intent, being a mental state may not be susceptible of being proved by direct evidence, and, therefore, you may infer the nature of the defendant's intent from all the circumstances.

56. Circumstantial evidence is evidence which tends to prove a disputed fact by proof of other facts and circumstances, which have a legitimate tendency to lead the mind to the conclusion that the fact exists, which is sought to be established.

57. The defendant's own conduct and words, if any, may be an index as to his intent and you may infer from the defendant's conduct, and words, if any are shown by the evidence, what his intent might have been.

58. There has been some testimony of certain statements purportedly made by the defendant prior to our declaration of war with Germany. Such statements of the defendant, if you believe they were made, are not grounds for charging the defendant with treason. The defendant, as well as others, had the right to his opinions and he had a right to express his opinions and to do anything lawful in keeping with those opinions and sympathies, but those statements, if you believe any were made, may be borne in mind by you in determining what his intent may have been after this country was at war with Germany, in committing, if you find beyond a reasonable doubt that he did so commit, any of the various overt acts charged in the indictment and submitted to your consideration by the court in these instructions.

59. No law of the United States is violated when a person in a general discussion expresses favorable or adverse opinions as to members of any race, color or creed, or regarding any nationality.

60. The court has permitted the Government to introduce into evidence in this case certain alleged statements or utterances purportedly made by the defendant prior to the events forming the basis of the indictment in this case. Such statements or utterances, if you believe they were made by the defendant, do not constitute evidence of the commission either of the treason alleged or of the commission of any alleged overt act, but may be considered by you, if you credit them, solely in determining the intent or state of mind of the defendant in performing, if you find he did perform, any alleged overt act or acts of treason charged in the indictment to have been commited by him, and submitted to your consideration in these instructions.

61. The court has also permitted the Government to introduce evidence of certain alleged admissions made by the defendant after he was in custody. You are instructed that such evidence may be considered by you solely on the issue of the intent or state of

mind of the defendant in committing, if he did commit, any of the overt acts alleged in the indictment and submitted to your consideration in these instructions. In other words, any witness who may have testified to such alleged admissions is not a "witness" within the meaning of the Constitutional requirement of "two witnesses to the same overt act."

90 62. You are further instructed that the testimony of Ernest Peter Burger and the testimony of any other witness, if any, concerning alleged events which may have taken place in Germany and France at the time of Herbert Haupt's alleged stay in those countries, and the testimony, if any, of any witness concerning alleged events in Florida, and all exhibits in evidence which may have been identified by any witness who may have testified to any such events, and all testimony, if any, of witnesses concerning alleged acts of Herbert Haupt and alleged utterances and statements purportedly made by him, both prior to and during his stay in Chicago in 1942, and out of the presence of this defendant, and all articles purportedly taken from the person of Herbert Haupt while in Chicago in June, 1942, and admitted in evidence, have been admitted for the sole and limited purpose of determining whether the said Herbert Haupt was or was not an agent of the Government of the German Reich and an enemy of the United States as charged in the indictment, and you are to consider this evidence solely on this question.

63. On the subject of the defendant's knowledge of the alleged enemy status of his son, it is necessary for the Government to prove beyond a reasonable doubt that in adhering to and giving aid and comfort to the enemies of the United States, if you find that he did so adhere to them and give them aid and comfort, the defendant knew at the time that Herbert Haupt was an enemy agent, as alleged in the indictment. It is not necessary, however, for the Government to prove that the defendant knew in detail all of the things which this alleged enemy intended to do (if you find that he was an enemy agent and that he did come to this country as a German agent as the indictment alleges). Nor is it necessary for the Government to prove that the defendant knew all of the facts which the Government may have offered in evidence to prove Herbert Haupt's alleged enemy status. It is only necessary for the Government to prove beyond a reasonable doubt that the defendant knew that Herbert Haupt was a spy, saboteur or enemy agent, if such were the fact.

64. The task which is imposed upon you is one which should be performed by your intellects and should not be attempted to be performed by your emotions. The psychologists tell us, as you

know, that our minds are made up of two parts, our intellects and our emotions. Our intellects are those parts of our minds whereby we reason. Our emotions are those parts of our minds which generate hate, prejudice, sympathy, pity and like feelings. The task which now confronts you, as jury men and women, cannot, and should not be attempted to, be performed by your emotions. If you attempt to use your emotions to decide this case you will probably make a mistake. If you use your intellects, as you should, the possibilities of your making a mistake are minimized. Furthermore, if you attempt by your verdict to decide some question other than that submitted to you by the court you will probably make a mistake. While if you decide by your verdict only the question submitted to you by the court the possibilities of your making a mistake are minimized.

65. The question of the possible punishment of the defendant in the event of a conviction is not a matter for the jury to consider, and should not in any way enter into your deliberations. The duty of imposing sentence on a defendant rests solely upon the Court, who tries to perform it fairly and with due consideration for all the circumstances. The function of the jury is to weigh all the evidence and determine the guilt or innocence of the defendant, solely from that evidence.

91 66. You will take with you to your jury room the indictment and the exhibits which have been offered and received in evidence and which are proper to go to the jury room and which counsel will now assemble and hand to the Marshals in charge of the jury. If counsel have any differences of opinion as to which exhibits should go to the jury room they shall call such differences to the attention of the court at the conclusion of these instructions. If the court's attention is not then called to differences, the court will assume that there are none. You will also take with you two forms of verdict. One form of verdict reads, "We, the jury, find the defendant, Hans Max Haupt, not guilty as charged in the indictment." The other form of verdict reads, "We, the jury, find the defendant, Hans Max Haupt, guilty as charged in the indictment." Having arrived at a verdict, you will use the first form if you find the defendant not guilty, and the second form if you find the defendant guilty. All jurors must sign the verdict on which you agree, the foreman signing first and the other jurors following.

67. I suggest that, before commencing your deliberations, you elect one of your number foreman to preside over your deliberations.

92 In United States District Court

[Title omitted.]

Memorandum of Judge Barnes specifying overt acts withdrawn from jury and overt acts submitted to jury

Filed June 9, 1944

93 In accordance with the instructions of the court, heretofore given you, there are withdrawn from your consideration, as possible overt acts of treason, the following alleged acts charged in the indictment:

Overt acts numbered 1 to 9, both inclusive;
Overt acts number 18 and 19; and
Overt acts numbered 24 to 29, both inclusive.

And that there are submitted for your consideration, as possible overt acts of treason, the following alleged acts charged in the indictment:

Overt acts numbered 10 to 17, both inclusive; and
Overt acts numbered 20 to 23, both inclusive.

94 In United States District Court

[Title omitted.]

Additional charge to the jury by Judge Barnes

Filed June 9, 1944

95 Pursuant to the written request of the jury through your foreman there has been read to you a transcript of the testimony of the witnesses Short, Hirsch, and Robe. The jury are cautioned to bear in mind that they have now heard the testimony of these three witnesses twice while they have heard the testimony of the other witnesses only once, and that they shall not allow the fact that they have heard the testimony of these three witnesses twice to cause them to give undue importance or weight to it. The jury should, on the other hand, consider the testimony of these three witnesses, and that of each of them, as though they had heard it but once and consider it together with all the other evidence in the case.

97 In United States District Court

[Title omitted.]

Verdict

June 9, 1944

This day comes the United States by the United States Attorney comes also the defendant Hans Max Haupt in his own proper person and by his counsel and the Jury heretofore elected, empaneled, and sworn herein for the trial of this cause also come and present to the Court their written request to have the testimony of Messrs. Short, Hirsch, and Robe read to them and the Jury after having had the testimony of Messrs. Short, Hirsch, and Robe read to them and hearing the further instructions of the Court again retire to their rooms with sworn Marshals to consider further of their verdict and afterwards return into open Court and render their verdict and upon their oath do say We the Jury, find the defendant Hans Max Haupt guilty as charged in the indictment" and on motion of the defendant by his counsel that the Jury be polled the Clerk inquires of each and every Juror "is this now your verdict" to which inquiry each and every Juror replied in the affirmative and it is

Ordered by the Court that the defendant file certain motions as they may desire to file not later than four o'clock P. M. June 13 A. D. 1944 and that hearing on said motions as may be filed be and the same is hereby set for June 14 A. D. 1944 at ten o'clock A. M.

98 And on, the same day, to wit, the 9th day of June, A. D. 1944, there was filed in the Clerk's office of said Court a certain letter addressed to Judge Barnes signed by Jurors and Foreman in words and figures following, to wit:

99 JUNE 9, 1944.

Your Honor, Judge BARNES:

Realizing fully that our function terminates with the rendering of our verdict, we, the jury, are moved humbly to beseech Your Honor's consideration in dealing mercifully with this defendant.

In conformity with Your Honor's instructions, neither pity nor sympathy was entered into our deliberations. In this plea we express only what is in our hearts.

Respectfully,

Guilford H. Rothfuss, Jos M. Callner, Wilbert A. Saakso, Mildred Ellencieg, Faunie Joy, Helen A. Hinkley, Emma Scott, Lillian H. Lewis, Ellen M. Ginler, Fred F. Rank, Earl Davis, Chas. J. St. Amand.

101 In the District Court of the United States

[Title omitted.]

Motion for new trial

Filed June 13, 1944

And now, after verdict and before sentence, this defendant, Hans Max Haupt, by Paul A. F. Warnholtz and Frederick J. Bertram, his counsel, comes and moves the Court to set aside the verdict of the jury and for a new trial in said cause, upon the grounds and for the reasons following, without prejudice to other grounds or errors which may have occurred upon the trial of said case, to wit:

1. The Court, in charging the jury, improperly and erroneously gave the following instructions and charges to the jury, concerning acts, innocent and lawful per se viz:

"53. As I have heretofore stated to you the treasonable intent of the defendant is an essential element of the crime charged herein, and before you can find the defendant guilty you must find beyond a reasonable doubt, not only that such defendant adhered to the enemies of the United States, giving them aid and comfort, but also that at the time of such alleged adherence and giving of aid and comfort, the defendant intended to do so. This does not mean, however, that you must find that the defendant went through any specific mental process as a result of which he was conscious of the specific thought, "I am going to commit treason". This is not necessary for every man in law is presumed to intend the natural and probable consequences of his acts if they are deliberately done. Anyone who is conscious of his acts and his surroundings and knowingly commits certain acts must be regarded as intending the natural and probable consequences of those acts. These observations are, of course, not intended to cast any inferences one way or another on the defendant's intent."

"54. In this regard, motive should not be confusad with intent. If a person knowlingly and deliberately adheres to and gives aid and comfort to one whom he knows to be an enemy, then he must, in law, be taken to intend the natural and probable consequences of his own deliberate act, and the fact that his motive

102 may not have been to aid the enemy is no defense. In other words, one cannot do an act which he knows will give aid and comfort to a person he knows to be an enemy of the United States and then seek to disclaim criminal and treasonable intent by saying that his motive was not to aid the enemy. So if you believe from the evidence beyond a reasonable doubt that the

defendant as alleged in the indictment, performed one or more of the overt acts submitted to your consideration and that that act or those acts were of such a nature that the natural and probable consequence of their performance was to give aid and comfort to the enemy, and if you further believe that the defendant performed such act or acts deliberately with knowledge that Herbert Haupt was an enemy agent, if you find that he was, then you may find that the defendant had the criminal and treasonable intent, since he intended to do the act forbidden by the law. Under such circumstances, the fact that you may also believe that his motive in so doing, if you find that he did, was for example, to help his son, would not in such event, change the fact that he had a criminal and treasonable intent."

"63. On the subject of the defendant's knowledge of the alleged enemy status of his son, it is necessary for the Government to prove beyond a reasonable doubt that in adhering to and giving aid and comfort to the enemies of the United States, if you find that he did so adhere to them and give them aid and comfort, the defendant knew at the time that Herbert Haupt was an enemy agent, as alleged in the indictment. It is not necessary, however, for the Government to prove that the defendant knew in detail all of the things which this alleged enemy intended to do (if you find that he was an enemy agent and that he did come to this country as a German agent as the indictment alleges). Nor is it necessary for the Government to prove that the defendant knew all of the facts which the Government may have offered in evidence to prove Herbert Haupt's alleged enemy status. It is only necessary for the Government to prove beyond a reasonable doubt that the defendant knew that Herbert Haupt was a spy, sabateur or enemy
103 agent, if such were the fact." Moreover, the Court in so charging the jury, improperly and erroneously, as is set forth in said instructions and charges, numbered 53, 54, and 63, nullified the effect of the instruction number 37 in the Court's charge, which reads:

"37. If you are not satisfied, beyond a reasonable doubt, that the defendant's intention and purpose in acting as he did was evil, that is, if you are not satisfied beyond a reasonable doubt that the defendant intended to aid and comfort the enemies of the United States the defendant must be found not guilty. If you believe the defendant's intention in doing what he did during the period from June 17, 1942, to and including July 17, 1942, was not in any way to injure the United States but merely to assist his son, Herbert Haupt, as an individual, as distinguished from assisting him in his purposes, if such existed, of aiding the German Reich, or of injuring the United States, the defendant must be found not guilty."

2. The Court improperly instructed the jury upon the law and upon the facts of the case, and the Court erred in giving the instructions and charges to the jury numbered by paragraphs in the Court's Charge as follows: "8", "9", "13", "30", "33", "34", "35", "36", "39", "40", "41", "42", "46", "47" (including the sub-paragraphs numbered "10", "11", "12", "13", "14", "15", "16", "17", "20", "21", "22", and "23"), "49", "50", "51", "52", "53", "54", "55", "56", "57", "58", "60", "64", "63", "64", and "66".

3. The Court improperly and erroneously refused to give to the jury instructions requested on behalf of the defendant and submitted to the Court for the instruction of the jury and numbered as follows: "D-1", "D-2", "D-3", "D-4", "D-6", "D-7", "D-8", "D-10", "D-11", "D-12", "D-13", "D-15", "D-16", "D-17", "D-18", "D-19", "D-20", "D-21", "D-22", "D-23", "D-24", "D-25", "D-26", "D-27", "D-28", "D-29", and "D-30."

4. The Court, in its charge as a whole, failed to instruct the jury properly upon the theory of the defense that acts done
104 by the defendant to aid and comfort his son as an individual without intention to aid the enemies of the United States would not amount in law to the crime of treason; and the Court's charge to the jury did, in fact, deprive the defendant of such defense.

5. The Court improperly and erroneously permitted to be read to the jury, over the objections of the defendant's counsel, the testimony of two witnesses for the prosecution (Witnesses Hirsh and Robe) and of one witness for the defendant (Witness Short), as requested by the Foreman of the jury, after the jury had retired and had been deliberating upon their verdict for a period of approximately twenty-two (22) hours without sleep and had been unable to agree upon any verdict.

6. The Court improperly and erroneously received in evidence the testimony of divers witnesses (viz. Witnesses Fishman, Schroeder, Poppe, et al.) concerning conversation and statements alleged to have been made by the defendant prior to June 17, 1942, and some of them as early as the year 1935, and the Court improperly overruled defendant's motions to exclude such testimony from the jury, all of which testimony was highly inflammatory and prejudicial to the defendant's right to a fair and impartial trial.

7. The fact that the jury were kept deliberating upon their verdict for a period of approximately twenty-eight (28) hours, without sleep and without accommodations for rest or retirement of the jury, operated to prejudice and did prejudice the right of the defendant to a fair and impartial trial.

8. The Court improperly and erroneously sustained an objection of the United States Attorney to the oral argument on be-

half of the defendant made by Attorney Frederick J. Bertram, with reference to the testimony of the witnesses Hamby and Majerczak, and the Court improperly took issue with the statement of defense counsel and admonished counsel for the defendant, to the prejudice of the defendant and to the embarrassment of his counsel.

105 9. The prosecuting attorneys for the United States of America, in their arguments to the jury at the conclusion of the case, made inflammatory, prejudicial, impertinent, irrelevant, and improper argument and comments not founded upon evidence in the case, but appealing to passion, prejudice, patriotic emotions, and war hysteria, depriving the defendant of the right to a fair and impartial trial.

10. Shortly preceding the closing arguments to the jury at the conclusion of the evidence in the case, the great invasion, or establishment of a second front in France by the military forces of the United States and our allies, was announced by radio and press as the great "Invasion Day", and the jurors had heard such radio and press reports by reason of the fact that the jurors were not confined, but were permitted to go to their homes and to public places between the regular sessions of the Court and during the recesses for luncheon, and that, notwithstanding the excitement and patriotic emotions and fervor naturally engendered in the minds of the jurors by such news, and notwithstanding the duty and need for a deliberate and temperate inquiry and trial of the defendant upon a charge of the crime of treason, the prosecuting attorney, Mr. Finn, made impassioned reference to the soldiers of our country fighting in this war, and the United States Attorney, Mr. Woll, made further inflammatory references to the war and made particular reference to "invasion"; all of which matters deprived the defendant of a fair, temperate and impartial trial.

11. The Court erred in admitting improper evidence in behalf of the United States of America.

12. The Court erred in refusing to admit proper evidence offered on behalf of the defendant.

13. The Court erred in refusing to admit evidence offered by the defendant for the purpose of impeachment of the witness Majerczak.

14. The Court erred in submitting to the jury certain overt acts as "possible overt acts" upon which there was not testimony
106 of two witnesses to the particular overt act, as required by the Constitution, and that by reason of the fact that certain of said overt acts so submitted to the jury were not proved by the testimony of two witnesses as required by the Constitution, the Court further erred in instructing the jury that proof of any one

of said submitted overt acts would be sufficient to convict the defendant.

15. The evidence does not show beyond a reasonable doubt that the defendant was guilty of a criminal intent to commit treason as charged in the indictment.

16. The evidence in the case was insufficient to satisfy the burden of proof beyond a reasonable doubt imposed upon the prosecution to prove that any alleged act was committed by the defendant with intent to commit treason against the United States, and the decision that any act was committed by the defendant with a treasonable intent rested wholly upon speculation and no juror could make such determination without a reasonable doubt.

17. The evidence does not show beyond a reasonable doubt that the defendant was guilty of the charges as laid against him in the indictment.

18. The verdict of the jury is the result of passion, prejudice and war hysteria.

19. The verdict of the jury is not supported by the law and the evidence.

20. The verdict of the jury is contrary to the law and the evidence.

21. The Court erred in overruling the respective motions of the defendant, made at the conclusion of the Government's case, and again made at the conclusion of all of the evidence, to direct the jury to find the defendant not guilty of the charges contained in the indictment, and in overruling the further motions of the defendant to find the defendant not guilty upon each of the overt acts charged in the indictment against the defendant.

107 22. The Court erred in refusing to receive in evidence the Statute of the State of Illinois relating to accessories after the fact in the Criminal Code of the State of Illinois, viz, Illinois Revised Statutes, Chapter 38, Division II, Section 4, State Bar Association Edition, 1943, chapter 38, paragraph 584, page 1208.

23. The Court erred in overruling defendant's motion for a Bill of Particulars before trial, which tended to prejudice the defendant and to hamper and embarass him in making his defense.

24. The Court erred in failing and refusing to exclude from the evidence and from the jury's consideration the evidence relating to overt acts which were withdrawn, and the Court erred in permitting the jury to consider for any purpose whatsoever the evidence upon overt acts which were withdrawn from the case.

25. The Court erred in denying defendant's motion to strike and exclude from the evidence all testimony of witnesses for the prosecution relating to statements alleged to have been made by

the defendant prior to December 7th, 1941, and prior to the entry of the United States into the war.

26. The Court erred *in receiving* in evidence testimony of witnesses relating to conversations with Herbert Haupt and alleged statements made by Herbert Haupt outside of the presence of the defendant, and the Court erred in overruling the motion of the defendant to exclude all such testimony from the case.

27. The Court erred in denying defendant's motion to strike and exclude from the evidence all testimony of witnesses for the prosecution relating to matters involving activities of Herbert Haupt, which occurred prior to the middle of June, 1941.

Wherefore defendant prays that the Court set aside the verdict of the jury and grant the defendant a new trial.

PAUL A. F. WARNHOLTZ
FREDERICK J. BERTRAM,
Attorneys for Hans Max Haupt, defendant.

108 In United States District Court

[Title omitted.]

Motion in arrest of judgment

Filed June 13, 1944

Now comes Hans Max Haupt, the defendant, by Paul A. F. Warnholtz and Frederick J. Bertram, his attorneys, and moves that the verdict of guilty against him by a jury in this Court returned upon the 9th day of June 1944, be arrested and no judgment and sentence be imposed thereon for the following reasons:

1. That the indictment herein is bad for improper joinder of offenses in one indictment, and for duplicity, in that it charges the defendant in one indictment and in a single count thereof with the commission of twenty nine separate and distinct acts, each one therof allegedly constituting a crime: and that the said improper joinder of charges, and the said duplicity tended to the prejudice of the defendant in this that it did confuse the jury and embarrass the defendant in making his defense.

2. That the indictment herein is bad in this that some of the separate and distinct acts therein set forth are of the same class of crimes or offenses, and some are of different classes of crimes or offenses, and punishable by different penalties, to wit:

Overt Acts numbered 1 to 25, both inclusive, attempt to charge the commission of twenty-five distinct acts of the crime of treason, punishable under Section 2 of Title 18, United States Code, by death, or at the discretion of the court by imprison-

ment of not less than five years and a fine of not less than $10,000;

109 Overt Act number 26 charges in fact a conspiracy by and between the defendant and other persons, to commit the crime of treason, punishable under Section 34, Title 50, U. S. C. and/or under Section 88, Title 18, U. S. C., by a fine of not more than $10,000 or imprisonment for not more than two years, or both;

Overt Act number 29 charges in fact a violation of the Espionage Act, as defined by Section 33 of Title 50, U. S. C., punishable under said Section by a fine of not more than $10,000 or by imprisonment for not more than twenty years, or both;

Overt Acts numbered 27 and 28 do not charge a violation of any known crime, and are not subject to any punishment whatsoever.

And the defendant states, that the inclusion of the said charges of different classes of crimes in one indictment, the indictment herein, tended to the prejudice of the defendant in this that it did confuse the jury and embarrass the defendant in making his defense.

3. That the alleged offenses and each of them set forth in said indictment and charged to have been committed by the defendant, do not constitute acts of treason within the meaning of and as defined by the Constitution of the United States of America, and as stated in Section 1, Title 18, U. S. C., and that by reason of the charges so made in the indictment, the jury did become confused, to the prejudice of the defendant.

4. That the Court erred in overruling the defendant's motion for a bill of particulars herein, which tended to the prejudice of the defendant and to embarrass him in making his defense.

(Signed) PAUL A. F. WARNHOLTZ,
(Signed) FREDERICK J. BERTRAM,
Attorneys for Hans Max Haupt, defendant.

110 In the District Court of the United States for the Northern District of Illinois, Eastern Division

No. 44 CR. 129.

THE UNITED STATES OF AMERICA

vs.

HANS MAX HAUPT

Judgment

June 14, 1944

This cause coming on to be heard upon the defendant's Motion for a New Trial and Motion in Arrest of Judgment heretofore filed herein comes the United States of America by the United

States Attorney comes also the defendant Hans Max Haupt in his own proper person and by his counsel thereupon after argument of counsel on behalf of said defendant and due deliberation by the Court said motion for a new trial is overruled and a new trial denied to which ruling of the Court the defendant duly excepts

It is further ordered that Defendant's Motion in Arrest of Judgment is also overruled to which ruling of the Court the defendant duly excepts and the defendant being asked by the Court if he has anything to say why the sentence and judgment of the Court should not now be pronounced upon him and showing no good and sufficient reasons why sentence and judgment should not now be pronounced it is therefore considered and

Ordered by the Court and is the sentence and judgment of the Court upon the Verdict of Guilty so rendered by the Jury aforesaid that the defendant Hans Max Haupt be committed to the custody of the Attorney General of the United States or his duly authorized representative for and during his natural life and besides forfeit and pay to the United States of America a fine in the sum of Ten Thousand Dollars ($10,000.00).

JOHN P. BARNES,
United States District Judge.

JUNE 14, 1944.

112 In the District Court of the United States

[Title omitted.]

Memorandum

Filed June 14, 1944

As the time to impose sentence on the defendant, Hans Max Haupt, approaches, I find myself impelled to speak in explanation of the sentence.

Thirteen years' experience in imposing sentences on persons who have pleaded guilty or been convicted of the commission of crime has taught me that, when I feel impelled to speak at a time such as this, the sentence under consideration does not square with my conscience. If I feel impelled to speak of the enormity of the defendant's crime, I know that the sentence under consideration is too severe; if I feel impelled to speak in extenuation of the crime, I know that the sentence under consideration is too light; and it is only when I feel that I may remain silent that I know that the proposed sentence squares with my conscience.

Now, the sentence to be imposed forces me to speak.

The statute provides: "Whoever is convicted of treason shall

suffer death; or, at the discretion of the court, shall be imprisoned not less than five years and fined not less than $10,000,"

In the court's opinion, the verdict of the jury, finding the defendant guilty of treason, was fully justified by the evidence. The court is convinced that Hans Max Haupt traitorously adhered to the enemies of the United States and gave them aid and comfort and that a considerable number of "overt acts" of treason were established by the testimony of two witnesses, as required by the Constitution. No other verdict than that rendered was reasonably possible.

When a judge is about to impose sentence he considers the effect of the punishment on the defendant and on society. He remembers that inadequate punishment may harm both the defendant, by fostering a contempt for law and law enforcement, and society, by failing to deter the defendant and other like-minded persons from committing like crimes. He remembers that too severe punishment may fail of reformatory effect because of its severity, and, for like reason, may have a brutalizing effect on the person on whom it is imposed and on the society that imposes it.

Punishment for crime should tend to reform the person to whom it is applied, if reform is possible, tend to prevent him from repeating his crime, and tend to protect society by reforming the individual to whom it is applied and by deterring him and other like-minded persons from committing like crimes.

Hans Max Haupt is 50 years old, and, in spite of the fact that he has lived in this country since 1923 and was naturalized in 1930, is, and for a long time has been, a fanatical Nazi. He willingly, and apparently gladly, sacrificed his only child to the Nazi cause. The court does not believe that Hans Max Haupt can be reformed. He is and always will be a Nazi.

The court does not believe that it need by punishment try to prevent Hans Max Haupt from committing treason again. While the court believes that the defendant's mental faculties are unimpaired, his spirit is broken and he is not likely to commit treason again.

113 What punishment is necessary to be imposed in order to deter other like-minded persons from committing like crimes? My conscience tells me that there is but one answer to that question and that answer is—Death. That would be the sentence and there would be no oral or written observations thereon by the court were it not for the facts hereinafter set forth.

After the jury had rendered their Verdict and it had been entered on the records of the court, the foreman handed the court a written communication, signed by all jurors, and reading as follows:

"JUNE 9, 1944.

"Your Honor, Judge BARNES:

"Realizing fully that our function terminates with the rendering of our verdict, we, the jury, are moving humbly to beseech Your Honor's consideration in dealing mercifully with this defendant.

"In conformity with your Honor's instructions, neither pity nor sympathy has entered into our deliberations. In this plea we express only what is in our hearts.

Respectfully,

Guilford H. Rothfuss, Jos. M. Caliner, Wilbert A. Laakso, Mildred Ellwing, Fannie Joy, Helen A. Hinkley, Emma Scott, Lillian H. Lewis, Ellen M. Givler, Fred F. Rank, Earl Davis, Chas. J. St. Amand."

The twelve men and women who signed that communication share with the court the responsibility for the fate that shall overtake Hans Max Haupt. Not until after they rendered a verdict of guilty did a duty rest on the court to impose sentence. They are reasonable men and women and listened carefully to all the evidence. They heard all that the court heard. They know all that the court knows. They desire, as does the court, to do right. In deference to the request of these men and women, whose judgment may be better than mine, the sentence will be life imprisonment and, because the statute requires it, a fine of $10,000.

JOHN P. BARNES,
United States District Judge.

115 In United States District Court

[Title omitted.]

Notice of appeal to the United States Circuit Court of Appeals for the Seventh Circuit

Filed June 19, 1944

Name and address of appellant: Hans Max Haupt; in custody of the United States Marshal for the Northern District of Illinois, Eastern Division.

Names and addresses of appellant's attorneys: Paul A. F. Warnholtz and Frederick J. Bertram, Room 1010 at 111 W. Washington Street, Chicago, Illinois.

Offense: Treason.

Date of judgment: June 14th, 1944.

Brief description of judgment or sentence: Imprisonment for life, and to pay a fine of $10,000.

Name of prison where now confined, if not on bail: County Jail of Cook County, Chicago, Illinois.

I, the above-mentioned appellant, hereby appeal to the United States Circuit Court of Appeals for the Seventh Circuit from the judgment above mentioned on the grounds set forth below.

Pursuant to Rule V. of the Supreme Court of the United States, Rules of Practice and Procedure in Criminal Cases, I hereby serve notice that I do not elect to enter upon the service of the sentence pending appeal.

HANS MAX HAUPT,
Appellant.

Dated June 14th A. D. 1944.

116 *Grounds for appeal*

1. That the indictment herein is bad for improper joinder of offenses in one indictment, and for duplicity; that the overt acts set forth in said indictment do not constitute acts of treason;

2. That the Court erred in overruling the defendant's motion for a bill of particulars.

3. That there was not "testimony of two witnesses to the same overt act," as required by the Constitution of the United States, as to certain overt acts submitted to the jury;

4. That the verdict of the jury is not supported by the law and the evidence;

5. The verdict of the jury is contrary to the law and the evidence;

6. The verdict of the jury is the result of passion, prejudice, and war hysteria.

7. The Court erred in overruling the motion of the defendant at the conclusion of the evidence in the case, to direct the jury to find this defendant not guilty of the charges contained in the indictment herein, and in overruling the further motion of this defendant to direct the jury to find the defendant not guilty upon each of the overt acts contained in said indictment.

8. The Court erred in admitting improper, incompetent, irrelevant, and immaterial testimony, documentary evidence and exhibits.

9. The Court improperly instructed the jury upon the law and upon the facts of the case.

10. The Court erred in failing or refusing to give instructions asked for by the defendant in said cause;

11. The prosecuting attorneys for the United States, in their arguments to the jury at the conclusion of the case, made inflammatory, prejudicial, impertinent, irrelevant and improper arguments and comments, not founded upon evidence in the case,

but appealing to passion, prejudice, patriotic emotions and
117 war hysteria, depriving the defendant of the right to a fair and impartial trial free of extraneous motives and prejudices;

12. The Court erred in sustaining divers objections of the prosecution to material evidence sought to be introduced by the defendant;

13. The evidence does not show beyond a reasonable doubt that the defendant was guilty of a criminal intent to commit treason as charged in the indictment;

14. The evidence does not show beyond a reasonable doubt that the defendant was guilty of the charges as laid against him in the indictment.

15. The defendant did not receive a fair and impartial trial herein, as required by the Constitution and laws of the United States.

16. The fact that the jury were kept deliberating upon their verdict for a period of approximately twenty-eight (28) hours, without sleep and without accommodations for rest or retirement of the jury, operated to prejudice and did prejudice the right of the defendant to a fair and impartial trial.

17. It was error to try the defendant on a new indictment for treason while there was and still is a subsisting and undisposed of indictment for treason, on which the United States Circuit Court of Appeals had ordered a new trial, and which involves substantially the same overt acts as in the indictment herein.

18. The Court improperly and erroneously permitted to be read to the jury, over the objections of the defendant's counsel, the testimony of two witnesses for the prosecution (Witnesses Hirsh and Robe) and of one witness for the defendent (Witness Short), as requested by the Foreman of the jury, after the jury had retired and had been deliberating upon their verdict for a period of approximately twenty-two (22) hours without sleep and had been unable to agree upon any verdict.

118 19. The Court improperly and erroneously sustained an objection of the United States Attorney to the oral argumen on behalf of the defendant, made by one of defendant's counsel with reference to the testimony of the witnesses Hamby and Majerczak, and the Court improperly took issue with the statement of defense counsel and admonished counsel for the defendant, to the prejudice of the defendant and to the embarrassment of his counsel.

20. The Court erred in overruling the motion of the defendant, at the conclusion of the Government's case, to direct the jury to find the defendant not guilty of the charges contained in the indictment herein, and in overruling the further motions of the

defendant to direct the jury to find the defendant not guilty upon each of the overt acts contained in the indictment.

21. The sentence herein cannot rest upon a general verdict of "guilty as charged in the indictment" under the particular form and contents of the indictment upon which the defendant was tried in the case at bar, inasmuch as certain of the overt acts charged in the indictment and submitted to the jury were not proved by two witnesses as required by the Constitution of the United States.

PROOF OF SERVICE

I hereby acknowledge receipt of a copy of the foregoing Notice of Appeal and Grounds for Appeal, this 19th day of June A. D. 1944.

J. ALBERT WOLL,
United States Attorney.
RICHARD G. FINN,
Asst. United States Attorney.

JUNE 19, 1944.

120 In United States District Court

[Title omitted.]

Order for hearing

June 20, 1944

Notice of appeal having been filed, it is ordered, that the Honorable J. Albert Woll, United States District Attorney, and Paul A. F. Warnholtz, Esq., and Frederick J. Bertram, Esq., Attorneys for Hans Max Haupt, appear before the judge of this court on Monday, June 26, 1944, at the hour of 10 o'clock A. M. in Room 653, United States Court House, Chicago, Illinois, in order that the judge may, at such time and place, give such directions as may be appropriate with respect to the preparation of the record on appeal, including directions for the purpose of making promptly available all necessary transcriptions of testimony and proceedings;

It is further ordered that the Clerk of this Court forthwith transmit copies of this order, by United States Mail, to said Honorable J. Albert Woll, United States District Attorney, and to Paul A. F. Warnholtz and Frederick J. Bertram, attorneys for Hans Max Haupt.

JOHN P. BARNES,
Judge.

Dated: June 20, 1944.

122 In United States District Court

[Title omitted.]

Order

June 26, 1944

Notice of appeal having heretofore been filed by Hans Max Haupt and the Clerk of this Court having notified the trial judge of the filing of said notice of appeal, and the trial judge having directed the attorney for the appellant and the United States Attorney to appear before him on Monday, June 26, 1944, at the hour of 10 o'clock A. M., in Room 653, United States Court House, Chicago, Illinois, and it having been represented to the judge, upon behalf of the appellant, that the appeal is to be prosecuted not only upon the clerk's record of proceedings but also upon a bill of exceptions:

It is ordered: (1) That the appellant on or before September 20, 1944, procure to be settled and filed with the Clerk of this Court a bill of exceptions, setting forth the proceedings upon which the appellant wishes to rely in addition to those shown by the clerk's record of proceedings: (2) that the appellant, within the same time, file with the clerk of this court an assignment of errors of which appellant complain.

BARNES, *Judge.*

Dated: June 26, 1944.

124 In United States District Court

[Title omitted.]

Praecipe and designation of contents of record on appeal

Filed Aug. 9, 1944

To the clerk of the District Court of the United States of America for the Northern District of Illinois, Eastern Division:

The appellant herein, Hans Max Haupt, by Paul A. F. Warnholtz, and Frederick J. Bertram, his attorneys, hereby designate and request that in preparing the transcript of the record in the above entitled cause for appeal to the United States Circuit Court of Appeals for the Seventh Circuit, the Clerk of said District Court of the United States include in the said transcript of record the following:

1. Placita.
2. The indictment.
3. Order entered February 29, 1944, granting leave to the defendant to plead or demur within ten days, etc.

4. Appearance of Paul A. F. Warnholtz as attorney for defendant, filed March 1, 1944.

5. Notice and demurrer on behalf of defendant filed March 6, 1944.

6. Answer of Government to demurrer filed March 9, 1944.

7. Petition for inquiry into the sanity of Hans Max Haupt, filed March 10, 1944.

8. Order entered March 10, 1944, overruling defendant's demurrer and exception taken by defendant; and granting leave to file petition for inquiry into sanity of defendant, etc.

9. Order entered March 22, 1944, appointing Dr. Francis Gerty, Dr. Loren Avery, Dr. Harold S. Hulbert, and Dr. Roland P. Mackay, to inquire into mental capacity of defendant, etc.

125 10. Order entered April 17, 1944, defining issue of fact for jury and swearing in jury to try insanity issue.

11. Order entered April 19, 1944, receiving verdict of jury and finding verdict warranted and defendant capable of understanding proceedings, etc.; and entering plea of not guilty, etc.

12. Notice and motion for leave to withdraw plea and motion to quash and dismiss indictment filed April 24, 1944.

13. Order entered April 24, 1944, for leave to withdraw plea and enter motion to quash and dismiss indictment.

14. Order entered April 24, 1944, denying defendant's motion to quash and dismiss indictment and exception taken by defendant.

15. Notice and motion for Bill of Particulars filed April 24, 1944.

16. Order entered April 24, 1944, overruling motion for Bill of Particulars and exception taken by defendant.

17. Defendant arraigned and plea of not guilty entered April 25, 1944.

18. Motion for directed verdict at close of Government's evidence filed by defendant on June 2, 1944.

19. Motion of defendant to strike and exclude certain testimony of witnesses relating to conversations with Herbert Haupt, etc., filed June 2, 1944.

20. Motion of defendant to strike and exclude all testimony regarding statements alleged to have been made by defendant prior to December 7, 1941, filed June 2, 1944.

21. Motion of defendant to strike and exclude certain testimony relating to statements alleged to have been made by defendant prior to June 17, 1942, filed on June 2, 1944.

22. Motion of defendant to strike and exclude certain testimony regarding matters involving activities of Herbert Haupt which occurred prior to the middle of June 1941, filed June 2, 1944.

23. Order entered June 2, 1944 overruling defendant's motion

for a directed verdict at the close of the Government's evidence and overruling said four written motions to strike and exclude certain testimony.

24. Motion of defendant at close of all of the evidence in the case for a directed verdict filed on June 5, 1944.

25. Order entered June 5, 1944 overruling and denying defendant's four written motions to strike and exclude certain testimony renewed at the close of all of the evidence in the case and overruling and denying defendant's motion for a directed verdict and exception taken by defendant.

126 26. Appearance of Frederick J. Bertram, as associate counsel filed on June 7, 1944.

27. Thirty instructions to the jury submitted on behalf of the defendant to Judge Barnes.

28. Instructions and charge to the jury of Judge Barnes.

29. Order entered June 8, 1944 showing retirement of jury to consider their verdict, etc.

30. Government's exhibits introduced in evidence in said cause.

31. Defendant's exhibits introduced in evidence in said cause.

32. Order entered June 9, 1944 showing the return of jury to courtroom to hear a reading of testimony of witnesses Short, Hirsch, and Robe and further instruction of the jury by the Court and retirement of jury again to consider their verdict.

33. Verdict of the jury returned, entered, and filed in said cause on June 9, 1944.

34. Letter addressed to Judge Barnes signed by jurors and foreman recommending mercy for the defendant, filed on June 9, 1944.

35. Motion for new trial filed on behalf of defendant by defendant on June 13, 1944.

36. Motion in arrest of judgment field on behalf of defendant on June 13, 1944.

37. Order entered June 14, 1944 overruling and denying defendant's motion for a new trial and exception taken by defendant and overruling and denying motion in arrest of judgment and exception taken by defendant, etc.

38. Judgment and sentence of defendant entered on June 14, 1944.

39. Memorandum opinion by Judge Barnes in pronouncing sentence filed on June 14, 1944.

40. Notice of appeal by defendant filed on June 19, 1944.

41. Order entered June 20, 1944 for directions to of preparations of record on appeal, etc.

42. Order entered on June 26, 1944 extending time for settling and filing Bill of exception and assignment of errors to September 29, 1944.

43. Bill of Exceptions of defendant (including court reporters transcript of the evidence)

127 44. Assignment of errors on behalf of defendant.

45. Order of Court approving and settling Bill of Exceptions, etc.

46. Copy of this Praecipe and Designation of contents of record on appeal.

47. Clerk's certificate to record.

PAUL A. F. WARNHOLTZ,
FREDERICK J. BERTRAM,

Attorneys for Hans Max Haupt, defendant, appellant herein.

Received a copy of the foregoing Praecipe and Designation of contents of record on appeal, this 9th day of August A. D. 1944.

J. ALBERT WOLL,
United States Attorney.
By RICHARD G. FURN.

128 And on, to wit, the 14th day of September A. D. 1944 came the defendant by his attorneys and filed in the Clerk's office of said Court certain Exhibits marked "1-2, 3, 5, 6, 8, 9, and 10" in words and figures following, to wit:

129 *Defendant's Exhibit 1*

RGF/ab. MAY 24.

United States District Court, Northern District of Illinois

UNITED STATES

vs.

HANS MAX HAUPT

To GUSTAV ZERMER No. 44 CR. 129.
2242 North Geneva Terrace,
Chicago, Illinois

You are required under penalty, to appear as a witness on behalf of the United States in the above-mentioned Court, at Room 450, United States Court House, Chicago, Ill., on May 18, 1944, at 10 o'clock a. m.

In order to get fees for your attendance and mileage, report each morning at Room 450, United States Attorney's office, and show this card, which must be preserved until you are discharged by him.

WM. H. MCDONNELL,
United States Marshal.

131 *Defendant's Exhibit 3*

RGF/ab.

United States District Court, Northern District of Illinois

UNITED STATES

vs.

HANS MAX HAUPT

To CARL WILLIE FRITZ EGGERT, No. 44 CR. 129.
3438 North Seeley Avenue,
Chicago, Illinois

You are required, under penalty, to appear as a witness on behalf of the United States in the above-mentioned Court, at Room 450, United States Court House, Chicago, Ill., on May 18, 1944, at 10 o'clock a. m.

In order to get fees for your attendance and mileage, report each morning at Room 450, United States Attorney's office, and show this card, which must be preserved until you are discharged by him.

WM. H. MCDONNELL,
United States Marshal.

Defendant's Exhibit 5

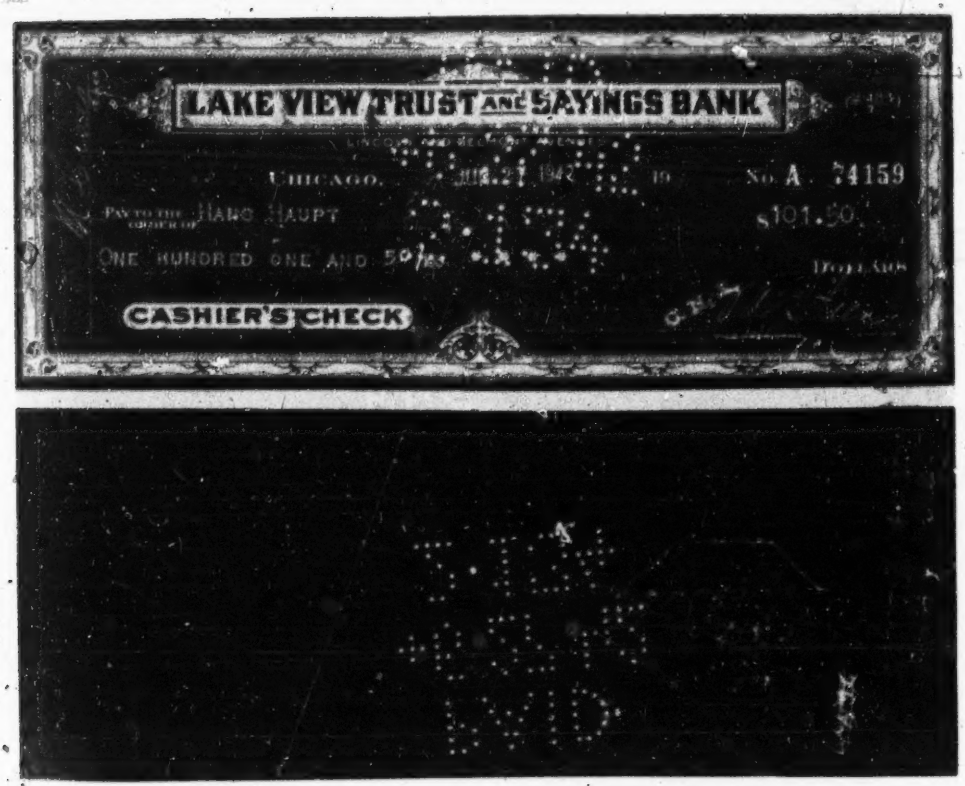
LAKE VIEW TRUST AND SAVINGS BANK, CHICAGO, ILL.

DRAFT REGISTER

Drafts Drawn on Lake View Trust and Savings Bank

Date 1942	Our number	In favor of—	For whom	Amount	Date paid
June 27	A741 51	Peoples Gas	Service Dept	$42.70	H. Jun. 30, 1942.
	52	Comm. Edison	do	47.97	H. Jul. 1, 1942.
	53	Supt. of Water, Chicago	do	25.76	H. Jul. 1, 1942.
	54	Western Union Telegraph Co.	do	10.59	H. Jun. 30, 1942.
	55	Olive Hankel	F. C. Hankel	2.00	H. Jul. 7, 1942.
	56	Sec. of State of Ill.	Expense Misc	4.00	H. Jul. 3, 1942.
	57	L. E. Hoope	Fred Zernitz	30.00	H. Jul. 1, 1942.
	58	Ill. Bell Tel	do	2.39	H. Jul. 1, 1942.
	59	Hans Haupt	John Schoenfeld	101.50	Jun. 27, 1942.
	60	Urban M. Foerster	George Curtis	52.50	H. Jul. 1, 1942.
	61	Templeton Lime Co	Gino Muttini	15.00	H. Jul. 1, 1942.
	62	Ill. Bell Tel	Max Herzog	2.39	H. Jul. 1, 1942.
	63	Ill. Bell Tel	D. Merle	2.39	H. Jul. 1, 1942.
	64	H. C. Witter	Henry Ulrich	359.00	Jun. 27, 1942.
	65	American Legion #769	Walter E. Baxter	2.20	H. Jul. 23, 1942.
	66	Provident Finance Co	Alfred Ganz	29.84	H. Jul. 6, 1942.
	67	Chicago Title and Trust Co.	Oscar E. Johnson	230.63	H. Jul. 9, 1942.
	68	Ill. Bell Tel	Arthur H. Nelson	2.39	H. Jul. 1, 1942.
	69	do	John Schneider	1.98	H. Jul. 1, 1942.
	79	Lake View Tr. & Sav. Bank.	Fred Fullhard	540.00	Jun. 29, 1942.
	71	Treas. of U. S.	William S. Hillstrom	208.50	H. Jul. 3, 1942.
	72	Carroll H. Sudler, Jr. Treas.	Lin. Bel. Y. M. C. A.	[illegible]	H. Jun. 30, 1942.
	73	George Williams College	J. Evar	12.50	H. Jul. 7, 1942.
	74	Victor Furniture Co	John Langley	3.07	H. Jun. 30, 1942.
	75	Publix Jewelery Co	do	2.00	H. Jul. 1, 1942.
	76	Coll. of Int. Rev	Auditing Dept	1,179.95	H. Jul. 2, 1942
	77	Book of the Month Club	Elisabeth A. Pelten	3.10	H. Jul. 6, 1942.
	78	Central Cemetery of Illinois.	B. J. Banner	16.00	H. Jul. 6, 1942.
	79	Continental Clothing House.	Michael Peter-Augusta Peter.	10.20	H. Jun. 30, 1942.
	80	Max Durselage	do	45.00	H. Jul. 7, 1942.
	81	Morris B. Sachs	Mrs. Wm. Groetzinger	8.96	H. Jul. 1, 1942.
	82	Investors Syndicate	Nick Michels	51.74	H. Jul. 1, 1942.
	83	The Knight Trust	Mrs. Ann Miller	38.50	H. Jul. 1, 1942.
	84	The Ill. Bell Tel	do	2.66	H. Jul. 1, 1942.
	85	Mutual Life Insurance Co.	Leonard H. Wolf	25.00	H. Jul. 1, 1942.
	86	Interment Insurance Assn	do	1.52	H. Jul. 1, 1942.
	87	Pure Protection Ins. Assn	do	1.52	H. Jun. 30, 1942.
	88	Peerless Insurance Assn	do	1.52	H. Jun. 30, 1942.
	89	Dearborn Insurance Assn	do	1.52	H. Jul. 1, 1942.
	90	Treas. of U. S.	George T. Tideman	9.95	H. Jul. 3, 1942.
	91	Void			
	92	Bergman Storage Co	Chas. Mau	6.00	Jun. 29, 1942.
	93	Studebaker Sales Co. of Chicago.	Clarence Wilde	187.70	H. Jul. 6, 1942.
	94	Mrs. C. Marsells	Chas. Mau	3.50	H. Jul. 11, 1942.
	95	Guarantee Trust Life Ins. Co.	Eleanor M. Goreham	16.56	H. Jun. 30, 1942.
	96	National Bond & Inv. Co.	Clifford Workman	19.62	H. Jul. 1, 1942.
	97	Ill. Bell Tel	Mrs. Gordon F. Jackett, Sr.	2.39	H. Jul. 1, 1942.
	98	Kroch's Book Stores, Inc.	Wm. C. Gau	2.04	H. Jul. 1, 1942.
	99	E. F. Hallquist	Gertrude E. Berg	185.00	H. Jul. 6, 1942.
	100	Ill. Bell Tel	Waldemar Lotz	3.26	H. Jul. 3, 1942.

Defendant's Exhibit 6



COPY

K-344208

Name	Hans Haupt
Postoffice Address	4444 N. Western Ave.
City or Town	Chicago ILLINOIS
Name of Car	Oldsmobile
Style of Body	2 Dr.Tr.
Year Built	1936
Factory No.	138984
Engine No.	L241900
SIGNATURE OF OWNER	Hans Haupt

This vehicle is subject to the following lien:

Amount	Kind of Lien	In Favor of
None		

PRINT OR TYPEWRITE NAME AND ADDRESS IN FULL
USE BLACK INK
Colored Inks, Rubber Stamps, or Pencils Do Not Photograph

I (We) acquired the above car { NEW / USED X } on April (Month) 7 (Day) 1939 (Year)

From NORBERG. TOWNE INC.

Whose address is 5137 Broadway (Street) Chicago, (City) Illinois (State)

Model L 36 No. and Bore of Cyl. 2 3 Horse Power 28.8

I (We) acquired car by Sale Bill of Conditional X Sale Repossession Seizure

Where did you register car last year? License No.

When did you bring car to Illinois?

When was car last operated?

Has the engine number ever been altered, removed or obliterated No (Yes or No) and if so,

how?

Numbers Chiseled, Plate Removed, New Block, etc.

Remarks:

Subscribed and sworn to before me this 7 day of April 1939

Jane Towne (Notary Public) (Due 7 [illegible])

Chas N Francese (Notary's Address)

[illegible] Hans Haupt

Address 4444 N. Western Ave. Chicago, Ill.

[illegible] MUST BE ANSWERED FULLY

[illegible] under terms of Conditional Sales Agreement [illegible] Bill of Sale for our permanent files.

[illegible] Registered Certificate of Title

[illegible] Title Number 7252325

APPLICATION FOR CERTIFICATE OF TITLE ONLY

[illegible] MOTOR VEHICLE, TRAILER, [illegible] TRAILER

[illegible] Required by Law

[illegible] J. HUGHES, Secretary of State

COPY

Name Hans Haupt K 344208

Corrected

Address 2234 Fremont

City or Town Chicago, County Cook ILLINOIS

Name of Car Oldsmobile Sedans | Style of Body Tudor | Year Built 1936

Factory No. 138934 | Engine No. L241900

SIGNATURE OF OWNER Hans Haupt

This vehicle is subject to the following lien:

Amount	Kind of Lien	In Favor of
100.00	Chattel Mortgage	Commonwealth Loan Co., 4803 Lincoln Av nue, Chicago, Illinois.

Address

PRINT OR TYPEWRITE NAME AND ADDRESS IN FULL
USE BLACK INK
Colored Inks, Rubber Stamps, or Pencils Do Not Photograph

Reason for requiring correction:—Check reason—

Engine number in error ..... Serial number in error .....

Explain difference in engine or serial number .....

Year built in error ..... Body style in error .....

Name of vehicle in error .....

To clear a lien ..... To register a lien XXXXXXXXXXXXX X

Error in name shown originally .....

To correct an address .....

Imperative—Return incorrect title: Number? .....

THIS APPLICATION AUTHORIZES THE SECRETARY OF STATE TO CHANGE ANY RECORDS AFFECTED BY THIS APPLICATION

Subscribed and sworn to before me this 10 day of May, 19 41

Lois Ackerman
(Notary Public) (Fee 25 cents)

4803 Lincoln Ave. Chicago, Ill.
(Notary's Address)

My Commission Expires Apr. 4, 1945

SEAL

Bill Certificate of Title to Commonwealth Loan Co.

Address 4803 Lincoln Ave. Chicago, Ill.

ALL QUESTIONS MUST BE ANSWERED FULLY

APPLICATION FOR CORRECTED CERTIFICATE
OF TITLE FOR ANY MOTOR VEHICLE

[TO BE USED WHEN ORIGINAL TITLE IS IN ERROR]

Certificate of Title Fee 50c—Required by Law

EDWARD J. HUGHES, Secretary of State

FOR INSTRUCTIONS, SEE OPPOSITE SIDE

(A16019—20032—2-49)

O.K. F.E.B. JUN 11 1941

136

STATE OF ILLINOIS

SURRENDERED
JUN 12 1941

THE SECRETARY OF STATE

Certificate of Title of A Motor Vehicle

I, EDWARD J. HUGHES, Secretary of State of the State of Illinois, do hereby certify that application has been made to me for a certificate of title of a motor vehicle described as follows:

[redacted]

And that the applicant has acted under oath that said applicant is the owner of said motor vehicle and that it is subject to the following liens and no others, and are none.

[redacted]

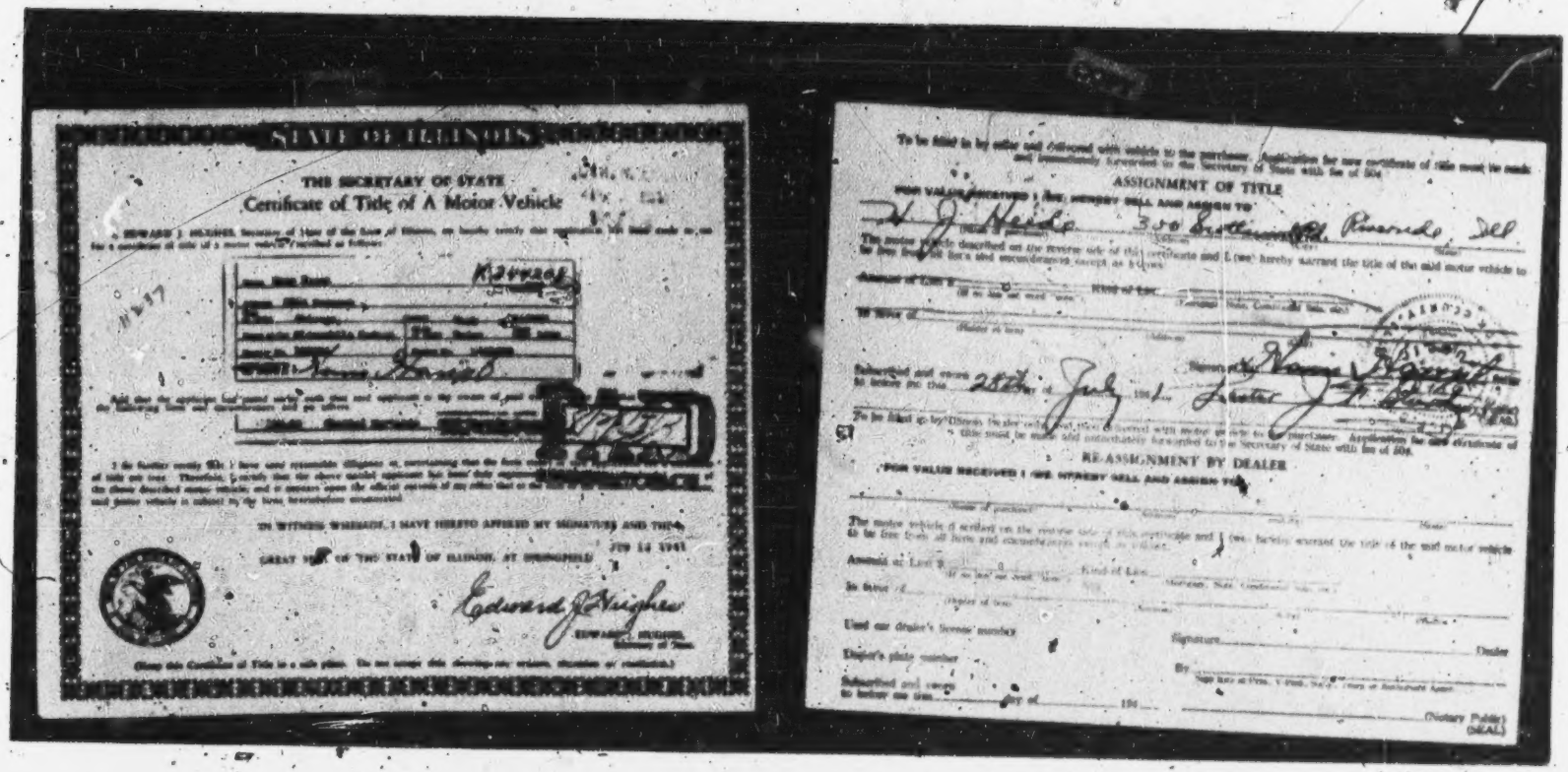
I do further certify that I have used reasonable diligence in ascertaining that the facts set out and appearing in said application for a certificate of title are true. That is, I certify that the above named applicant has been duly registered in my office as the lawful owner of the above described motor vehicle, and it appears upon the official records of my office that as the date of the issuance of this certificate, said motor vehicle is subject to the liens hereinbefore enumerated.

IN WITNESS WHEREOF, I HAVE HEREUNTO AFFIXED MY SIGNATURE AND THE GREAT SEAL OF THE STATE OF ILLINOIS, AT SPRINGFIELD APR 24 1939

Edward J. Hughes

EDWARD J. HUGHES,
Secretary of State.

Above this certificate of Title is a void blank. Do not accept title showing any erasures, alterations or mutilations.



STATE OF ILLINOIS

THE SECRETARY OF STATE

Certificate of Title of A Motor Vehicle

EDWARD J. HUGHES, Secretary of State of the State of Illinois, [illegible] certify that [illegible] for a certificate of title of a motor vehicle described as follows:

[illegible] K244208

[illegible]

[illegible]

[illegible]

IN WITNESS WHEREOF, I HAVE HERETO AFFIXED MY SIGNATURE AND THE GREAT SEAL OF THE STATE OF ILLINOIS, AT SPRINGFIELD

JUN 14 1941

Edward J. Hughes

EDWARD J. HUGHES, Secretary of State.

(Keep this Certificate of Title in a safe place. Do not accept title showing any erasure, alteration or mutilation.)

To be filed in by seller and delivered with vehicle to the purchaser. Application for new certificate of title must be made and immediately forwarded to the Secretary of State with fee of 50¢.

ASSIGNMENT OF TITLE

FOR VALUE RECEIVED I (WE) HEREBY SELL AND ASSIGN TO

H. J. Heide 350 Southwood Pl. Riverside, Ill.

(Name of purchaser) (Address) (City) (State)

The motor vehicle described on the reverse side of this certificate and I (we) hereby warrant the title of the said motor vehicle to be free from all liens and encumbrances except as follows:

Amount of Lien $ _____ Kind of Lien _____

(If no lien set word "none") (Mortgage, Note, Conditional Sale, etc.)

In favor of _____

(Holder of lien) (Address) (City) (State)

Subscribed and sworn to before me this 28th day of July 1941 [illegible]

To be filed in by Illinois Dealer only and then delivered with motor vehicle to the purchaser. Application for new certificate of title must be made and immediately forwarded to the Secretary of State with fee of 50¢.

RE-ASSIGNMENT BY DEALER

FOR VALUE RECEIVED I (WE) HEREBY SELL AND ASSIGN TO

_____

(Name of purchaser) (Address) (City) (State)

The motor vehicle described on the reverse side of this certificate and I (we) hereby warrant the title of the said motor vehicle to be free from all liens and encumbrances except as follows:

Amount of Lien $ _____ Kind of Lien _____

(If no lien set word "none") (Mortgage, Note, Conditional Sale, etc.)

In favor of _____

(Holder of lien) (Address) (City) (State)

Used our dealer's license number _____ Signature _____ Dealer

Dealer's plate number _____ By _____

(Sign here at Pres., V-Pres., Sec'y., Owner or Authorized Agent)

Subscribed and sworn to before me this _____ day of _____ 194__ _____ (Notary Public) (SEAL)

133 *Defendant's Exhibit 8*

Certificate Number 41249

STATE OF ILLINOIS

OFFICE OF THE SECRETARY OF STATE

To all to whom these Presents Shall Come, Greeting:

I, Edward J. Hughes, Secretary of State of the State of Illinois, do hereby certify that the following and hereto attached is a true photostatic copy of the application of Hans Haupt, 4444 N. Western Ave., Chicago, Illinois, for Certificate of Title covering Oldsmobile having Engine #L241900 and I further certify that Title #K-344208 was issued the said Hans Haupt, and I further certify that the said Hans Haupt filed application for Title Correction to register a lien and I further certify that on the 28th day of July A. D. 1941 this Title was assigned to one H. J. Heide, 300 Scottswood Rd., Riverside, Illinois, the original of which is now on file and a matter of record in this office.

In testimony whereof, I hereunto set my hand and cause to be affixed the Great Seal of the State of Illinois, Done at the City of Springfield this 6th day of May A. D. 1944.

[SEAL]

EDWARD J. HUGHES,
Secretary of State.

138 *Defendant's Exhibit 9*

Certificate Number 41250

STATE OF ILLINOIS

OFFICE OF THE SECRETARY OF STATE

To all to whom these Presents Shall Come, Greeting:

I, Edward J. Hughes, Secretary of State of the State of Illinois, do hereby certify that the following and hereto attached is a true photostatic copy of the application of H. J. Heide, 300 Scottswood Road, Riverside, Illinois, for Certificate of Title covering Oldsmobile Tudor having Engine #1241900 and I further certify that on the 1st day of August A. D. 1941 Certificate of Title #1461491 was issued the said H. J. Heide, and I further certify that on the 20th day of May A. D. 1943 said Title was assigned to one Alexander Golubiak, 2540 W. 45th Pl., Chicago, Ill., the original of which is now on file and a matter of record in this office.

In testimony whereof, I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois, Done at the City of Sringfield this 8th day of May A. D. 1944.

[SEAL]

EDWARD J. HUGHES,
Secretary of State.

COPY

Name	H. J. Heide		1461491
Street Address	300 Scottswood Road		
City or Town	Riverside		ILLINOIS
Name of Car	Oldsmobile	Style of Body Tudor	Year Built 1936
Factory No.	138934	Engine No. 1241900	Horse Power
WRITTEN SIGNATURE OF OWNER	H. J. Heide		

This vehicle is subject to the following lien:

Amount	Kind of Lien	In Favor of
None		

Address

PRINT OR TYPEWRITE ABOVE, USE BLACK INK

ALL QUESTIONS MUST BE ANSWERED FULLY

INSTRUCTIONS—If seized by Court, attach certified copy of order; if purchased NEW, have dealer complete Bill of Sale form on the back of this application. If USED car is purchased—attach Certificate of Title assigned to you by the Seller. On endorsed titles liens on face of title must be stamped paid by lien holder before accepting.

I (We) acquired the above car NEW / USED X on July (Month) 28th (Day) 1941 (Year)

From Hans Haupt

Whose address is 2234 Fremont (Street) Chicago (City), Illinois (State)

I (We) acquired car by Bill of Sale X Conditional Sale Repossession Seizure

Have you operated this car in Illinois? No

Do you intend to operate this car? Yes

When did you bring this car to Illinois?

Are you a licensed dealer in cars? No

Has the engine number ever been altered, removed or obliterated No (Yes or No) and if so, how?

Numbers Chiseled, Plate Removed, New Block, etc.

Remarks

Subscribed and sworn to before me this 28th day of [illegible], 1941

[illegible] (Notary Public) (Per 25 cents)

1501 [illegible] (Notary's Address)

SEAL

Mail Certificate of Title to H. J. Heide

Address 300 Scottswood Road, Riverside, Ill.

SURRENDERED Title Number X-[illegible]

APPLICATION FOR CERTIFICATE OF TITLE ONLY

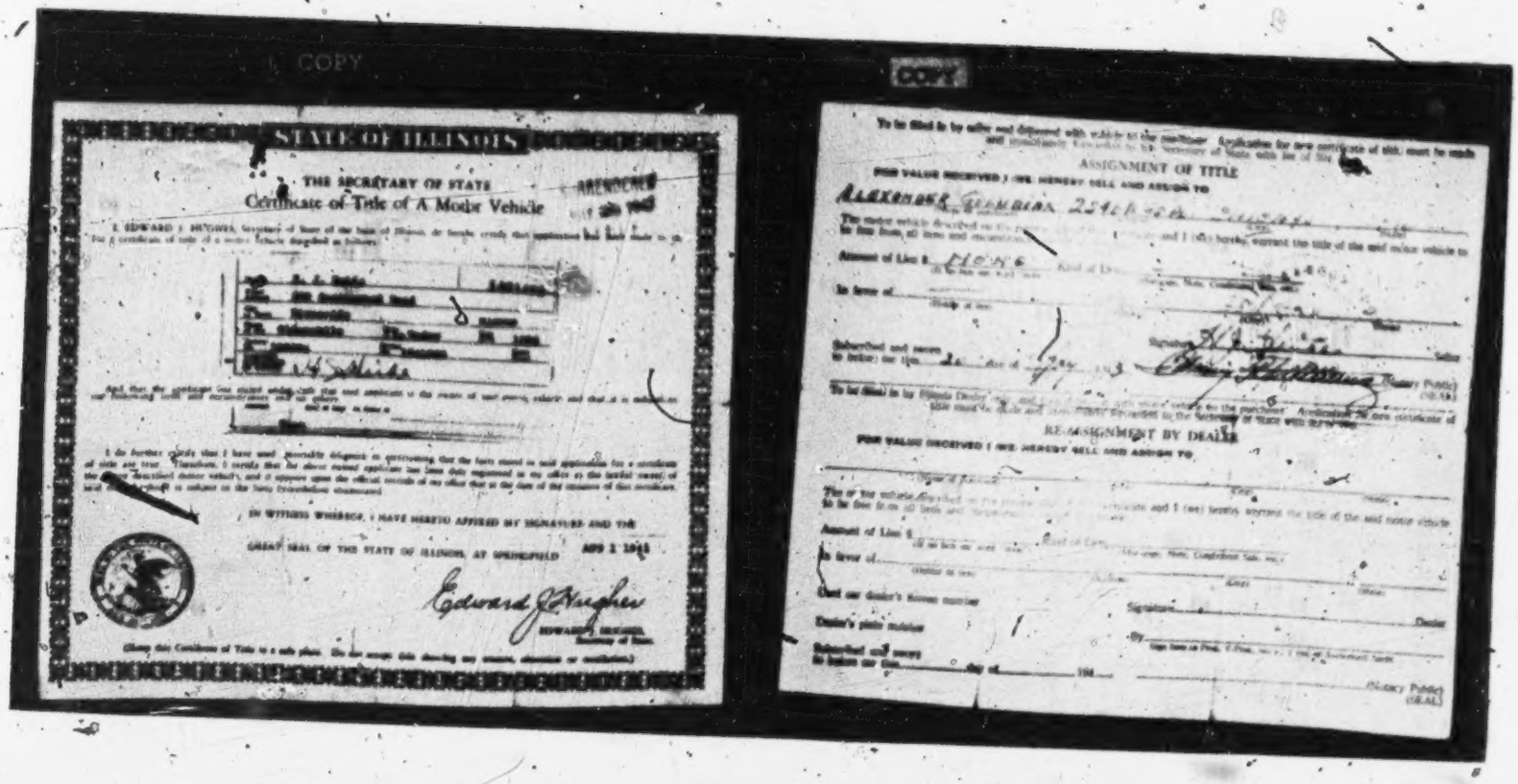
FOR ANY MOTOR VEHICLE, TRAILER, OR SEMI-TRAILER

Certificate of Title Fee 50c—Required by Law

EDWARD J. HUGHES, Secretary of State

(ABOVE—[illegible])

J. NASHER JUL [illegible] 1941 SPECIAL



COPY

STATE OF ILLINOIS

THE SECRETARY OF STATE

Certificate of Title of A Motor Vehicle

I, EDWARD J. HUGHES, Secretary of State of the State of Illinois, do hereby certify that application has been made to me for a certificate of title of a motor vehicle described as follows:

[illegible]

And that the applicant has stated under oath that said applicant is the owner of said motor vehicle and that it is subject to the following liens and encumbrances and no others:

[illegible]

I do further certify that I have used reasonable diligence in ascertaining that the facts stated in said application for a certificate of title are true. Therefore, I certify that the above named applicant has been duly registered in my office as the lawful owner of the above described motor vehicle, and it appears upon the official records of my office that at the date of the issuance of this certificate, said motor vehicle is subject to the liens hereinbefore enumerated.

IN WITNESS WHEREOF, I HAVE HERETO AFFIXED MY SIGNATURE AND THE GREAT SEAL OF THE STATE OF ILLINOIS, AT SPRINGFIELD APR 1 1941

Edward J. Hughes

EDWARD J. HUGHES, Secretary of State.

(Keep this Certificate of Title in a safe place. Do not accept title showing any erasure, alteration or mutilation.)

COPY

To be filled in by seller and delivered with vehicle to the purchaser. Application for new certificate of title must be made and immediately forwarded to the Secretary of State with fee of $[illegible]

ASSIGNMENT OF TITLE

FOR VALUE RECEIVED I (WE) HEREBY SELL AND ASSIGN TO

ALEXANDER GOMBIAN 2540 [illegible]

The motor vehicle described on the [illegible] and I (we) hereby warrant the title of the said motor vehicle to be free from all liens and encumbrances.

Amount of Lien $ NONE Kind of Lien [illegible]

In favor of [illegible]

Subscribed and sworn to before me this 26 day of [illegible] 19[illegible]

[illegible] (Notary Public) (SEAL)

To be filled in by Florida Dealer only and [illegible] with motor vehicle to the purchaser. Application for new certificate of title must be made and immediately forwarded to the Secretary of State with fee of $[illegible]

REASSIGNMENT BY DEALER

FOR VALUE RECEIVED I (WE) HEREBY SELL AND ASSIGN TO

[illegible]

The motor vehicle described on the [illegible] and I (we) hereby warrant the title of the said motor vehicle to be free from all liens and encumbrances.

Amount of Lien $ [illegible] Kind of Lien [illegible]

In favor of [illegible]

Cost our dealer's license number [illegible] Signature [illegible] Dealer

Dealer's plate number [illegible] By [illegible]

Subscribed and sworn to before me this [illegible] day of [illegible] 19[illegible]

[illegible] (Notary Public) (SEAL)

1940 363366 1-339-563 9 100

Transfer

Herbert Haupt, 775216

1940 Sheffield Rd.

Chicago Cook ILLINOIS

Plymouth Sedan Tudor 1941

Engine No. P12-129235

Model P12 No. and Date of Cyl. 6-3-1/2 Horse Power 25.44

Herbert Haupt

STATE OF ILLINOIS

1940

EDWARD J. HUGHES, Secretary of State

COPY

775.216

Name Hans Haupt,

Address 2234 Fremont Street,

City or Town Chicago, County Cook, ILLINOIS

Name of Car Plymouth Sedan Style of Body Tudor Year Built 1941

End Number P12-129235 Mach. No. 11186416

Signature of Owner Hans Haupt

This vehicle is subject to the following lien: In Favor of

Amount	Kind of Lien	
$180.00	Chattel Mortgage,	Commonwealth Loan Company Room 208, 4803 Lincoln Avenue, Chicago, Illinois

PRINT OR TYPEWRITE NAME AND ADDRESS IN FULL
USE BLACK INK
Colored Inks, Rubber Stamps, or Pencils Do Not Photograph

Reason for requiring correction—Check reason

Engine number in error ..... Serial number in error

Explain difference in engine or serial number

Year built in error ..... Body style in error

Name of vehicle in error

To clear a lien ..... To register a lien

Error in name shown on title

To correct an address

Imperative—Reason incorrect title: Number?

THIS APPLICATION AUTHORIZES THE SECRETARY OF STATE TO CHANGE ANY RECORDS AFFECTED BY THIS APPLICATION

Subscribed and sworn to before me this 5th day of January 1942

Patricia Graham
(Notary Public) (Fee 10 cents)

Room 208, 4803 Lincoln Avenue,
Chicago, Illinois

Mail Certificate of Title to Commonwealth Loan Company,

Address Room 208, 4803 Lincoln Avenue, Chicago, Illinois.

ALL QUESTIONS MUST BE ANSWERED FULLY

APPLICATION FOR CORRECTED CERTIFICATE
OF TITLE FOR ANY MOTOR VEHICLE
TO BE USED WHEN ORIGINAL
TITLE IS IN ERROR

Certificate of Title Fee 50c—Required by Law

EDWARD J. HUGHES, Secretary of State

FOR INSTRUCTIONS, SEE OPPOSITE SIDE

FEB 12 1942

CERTIFICATE

FEB 3 1942

ISSUED

COPY

Name	Herbert Haupt		775216
Street Address	1260 Hoffelder Rd.,		
City or Town	Glencoe		ILLINOIS
Name of Car	Plymouth	Style of Body Sedan	Year Built 1941
Factory No.	11186416	Engine No. P12-129235	Horse Power 23.44
WRITTEN SIGNATURE OF OWNER	Herbert Haupt		

This vehicle is subject to the following lien:

Amount	Kind of Lien	In Favor of
$572.40	Cond. Sale	Commercial Credit Co., Chicago, Illinois.

Address

PRINT OR TYPEWRITE ABOVE, USE BLACK INK

ALL QUESTIONS MUST BE ANSWERED FULLY

INSTRUCTIONS—If seized by Court, attach certified copy of order; if purchased NEW, have dealer complete Bill of Sale form on the back of this application. If USED car is purchased—attach Certificate of Title assigned to you by the Seller. On endorsed titles liens on face of title must be stamped paid by lien holder before accepting.

I (We) acquired the above car NEW XX USED on November (Month) 8, 1940 (Day) (Year)

From Dewar Motors, Inc.

Whose address is 6969 N. Western Ave., Chicago, Illinois, (Street) (City) (State)

I (We) acquired car by Bill of Sale Conditional Sale XX Repossession Seizure

Have you operated this car in Illinois? Do you intend to operate this car?

When did you bring this car to Illinois? Are you a licensed dealer in cars?

Has the engine number ever been altered, removed or obliterated No (Yes or No) And if so, how?

Numbers Chiseled, Plate Removed, New Block

Remarks

Subscribed and sworn to before me this 8 day of November, 1940

(Notary Public) (Fee 25 cents)

Chicago (Notary's Address)

Mail Certificate of Title to Commercial Credit Co.,

Address 4753 Broadway, Chicago, Illinois.

SURRENDERED Title Number New

APPLICATION FOR CERTIFICATE OF TITLE

FOR ANY MOTOR VEHICLE, TRAILER, OR SEMI-TRAILER

Certificate of Title Fee 50c—Required by Law

EDWARD J. HUGHES, Secretary of State

(A16227)

NOV 22 1940

ISSUE

142-A

NOV-10-40 343367 1-339-563 9 0.50

APPLICATION FOR CERTIFICATE OF TITLE FOR MOTOR VEHICLE

(Read instructions carefully)

Answer all questions fully. Incomplete applications or incorrect fees will be returned.

DO NOT SEND CURRENCY OR STAMPS, as the Secretary of State will not accept stamps and will assume no responsibility for the loss of currency. SEND CERTIFIED CHECK, DRAFT, POSTAL OR EXPRESS MONEY ORDER WITH APPLICATIONS.

The law requires both factory and engine numbers on application. Where factory and engine numbers are the same, write "No Number" in the factory number space.

Certificate of Title must be assigned and delivered to purchaser.

The Motor Vehicle Anti-Theft Act, approved May 11, 1923, provides that the Secretary of State shall not after January 1, 1934, register or renew a registration of any motor vehicle, unless and until the owner shall make application for and be granted a Certificate of Title. (Sec. 3 (a).)

THE FEE FOR CERTIFICATE OF TITLE IS 50¢.

A resident of Illinois who purchases a vehicle in a foreign State must pay a $25.00 investigation charge.

An owner who registers a vehicle does not apply for a Title each year. His original Certificate of Title is valid as long as he retains that vehicle.

Any person knowingly making a false statement in any application for Certificate of Title or any other document required by the Motor Vehicle Anti-Theft Act, may be punished by a fine of not more than one thousand dollars or imprisonment for not more than one year, or both. (Sec. 16 Motor Vehicle Anti-Theft Act.)

If application is for registration of a NEW car purchased from a dealer for which a Certificate of Title has not previously been issued, DEALER must complete bill of sale form at bottom of application. (Sec. 6 (b).)

Law Limits Fee of Notary Public to Not More Than 25¢

The undersigned statements were subscribed and sworn to before me this [illegible] day of November 1940

[illegible] Notary Public

[illegible] Notary's Address

[illegible] Motors, Inc. of

Firm Name

[illegible] Western Ave., Chicago, Illinois.

Business Address

in consideration of [illegible] do hereby sell on Nov. 8, 1940 a Plymouth

Date of Sale — Name of Car

Sedan — 1941 — P12 — 23.44

Style of Body — Year Built — Model — Horsepower

Factory No. 11186416 Engine No. P12-129235

This motor vehicle is equipped with safety glass wherever glass is used in doors, windows, windshields, etc.

To Herbert Haupt

Name of Purchaser

of 1240 Roffelder Rd., Glencoe, Illinois.

Street Address — City

The undersigned is the lawful and legal owner of the above described new automobile and guarantees it to be free from all mortgages, mechanic's lien, finance loans, and conditional sales contracts, notes or any encumbrance.

With the following exceptions:

There is a lien or encumbrance of $572.40 in favor of

Commercial Credit Co. — 4753 Broadway

Holder of lien or encumbrance — Address of lien holder

Kind Cond. Sale — Dealer's License Number 1562

(Note, Mortgage, Cond. Sale)

Signature of Seller Dewar Motors, Inc.

By Al. Notter

(Agent of Company)

Signature of Buyer Herbert Haupt

(ORIGINAL BILL OF SALE)

EDWARD J. HUGHES, Secretary of State

COPY

FEB-15-41 E57970 • -963-732 6.50

Name of Owner: Herbert Haupt
(Typewrite or Print Full Name)

Street Address: 1240 Hoffelder Road

City or Town: Glencoe County: Cook ILLINOIS

Name of Car: Plymouth Style of Body: Sedan Year Built: 1941

Factory No. 11186416 Engine No. P12-12[illegible]

Model: P 12 No. and Bore of Cyl. 6-[illegible] Horse Power: 23.44

WRITTEN SIGNATURE of Owner: Herbert Haupt

STATE OF ILLINOIS

LICENSE PLATES bearing above number are assigned to owner named under for motor vehicle described for year ending December 31, 1941.

EDWARD J. HUGHES, Secretary of State

1941

N

IMPERATIVE

IDENTIFICATION CARD SHOULD ACCOMPANY APPLICATION IF CAR PREVIOUSLY REGISTERED BY YOU

A title application should accompany this application if an Illinois title has not been issued in your name for this vehicle. If new car purchased dealer must execute Bill of Sale on back of your title application. If used car purchased send assigned title with these applications.

I (We) purchased or acquired the above described motor vehicle _____ on _____ 19__ by _____
(New or Used) (Month) (Day) (Bill of Sale, Conditional Sale, Lease)

from _____

Whose Address is _____
(Street) (City) (State)

Where did you register car last year? [illegible] License No. [illegible]

When did you bring car to Illinois? _____

If Illinois Certificate of title has been issued by the State in your name, show title number _____

Remarks: _____

Subscribed and sworn to before me this 13 day of Feb. 1941

Ernest A. Held
(Notary Public) (For 25 Cents)

1940 Fenny Pk Rd
(Notary's Address)

ALL QUESTIONS MUST BE ANSWERED FULLY

Remittance of Draft, Certified Check, Remittance of Postal or Exp. M. O. No. [illegible] 6.50

PASSENGER CAR APPLICATION

CARRYING NOT MORE THAN SEVEN PASSENGERS

EDWARD J. HUGHES, Secretary of State

For Instructions, See Opposite Side

[illegible]

143-A

JAN 22 [illegible] 548244 • -736-669 6.50

Name of Owner Herbert Haupt
(Typewrite or Print Full Name)

Street Address 2254 Fremont Str

City or Town Chicago County Cook ILLINOIS

Name of Car Plym Style of Body Sedan Year Model 1941

Factory No. 11186416 Engine No. P12-129235

Model No. and Bore of Cyl. Horse Power 23.44

WRITTEN SIGNATURE of Owner Herbert Haupt

1942

STATE OF ILLINOIS

LICENSE PLATES bearing above number are assigned to owner named hereon for motor vehicle described for year ending December 31, 1942.

EDWARD J. HUGHES, Secretary of State

IMPERATIVE

LAST IDENTIFICATION CARD SHOULD ACCOMPANY APPLICATION IF CAR PREVIOUSLY REGISTERED BY YOU

A title application should accompany this application if an Illinois title has not been issued in your name for this vehicle. If new car purchased dealer must execute Bill of Sale on back of your title application. If used car purchased send assigned title with these applications.

I (We) purchased or acquired the above described motor vehicle

_____ 19__ on _____ 19__ by _____
(New or Used) (Month) (Day) (Bill of Sale, Conditional Sale, Lease)

from Sewers Motor Inc.

Whose Address is 6959 Western Av Chicago
(Street) (City) (State)

Where did you register car last year? _____ License No. 963732

When did you bring car to Illinois? _____

If Illinois Certificate of Title has been issued by the State in your name, show title number _____

Remarks: _____

Subscribed and sworn to before me this 22 day of 1 18

Clark
(Notary Public) (Fee 25 Cents)

(SEAL)

_____
(Notary's Address)

ALL QUESTIONS MUST BE ANSWERED FULLY

Description of Remittance: Draft, Certified Check, Postal or Exp. M. O. No. Clark 6.50

PASSENGER CAR APPLICATION

CARRYING NOT MORE THAN SEVEN PASSENGERS

EDWARD J. HUGHES, Secretary of State

For Instructions, See Opposite Side.

([illegible])

COPY

STATE OF ILLINOIS

THE SECRETARY OF STATE

Certificate of Title of a Motor Vehicle

I, EDWARD J. HUGHES, Secretary of State of the State of Illinois, do hereby certify that application has been made to me for a certificate of title of a motor vehicle described as follows:

[redacted]

PAID

[redacted]

And that the applicant has complied with the said application in the manner of said motor vehicle and that he is entitled to the following liens and encumbrances and no others.

[redacted]

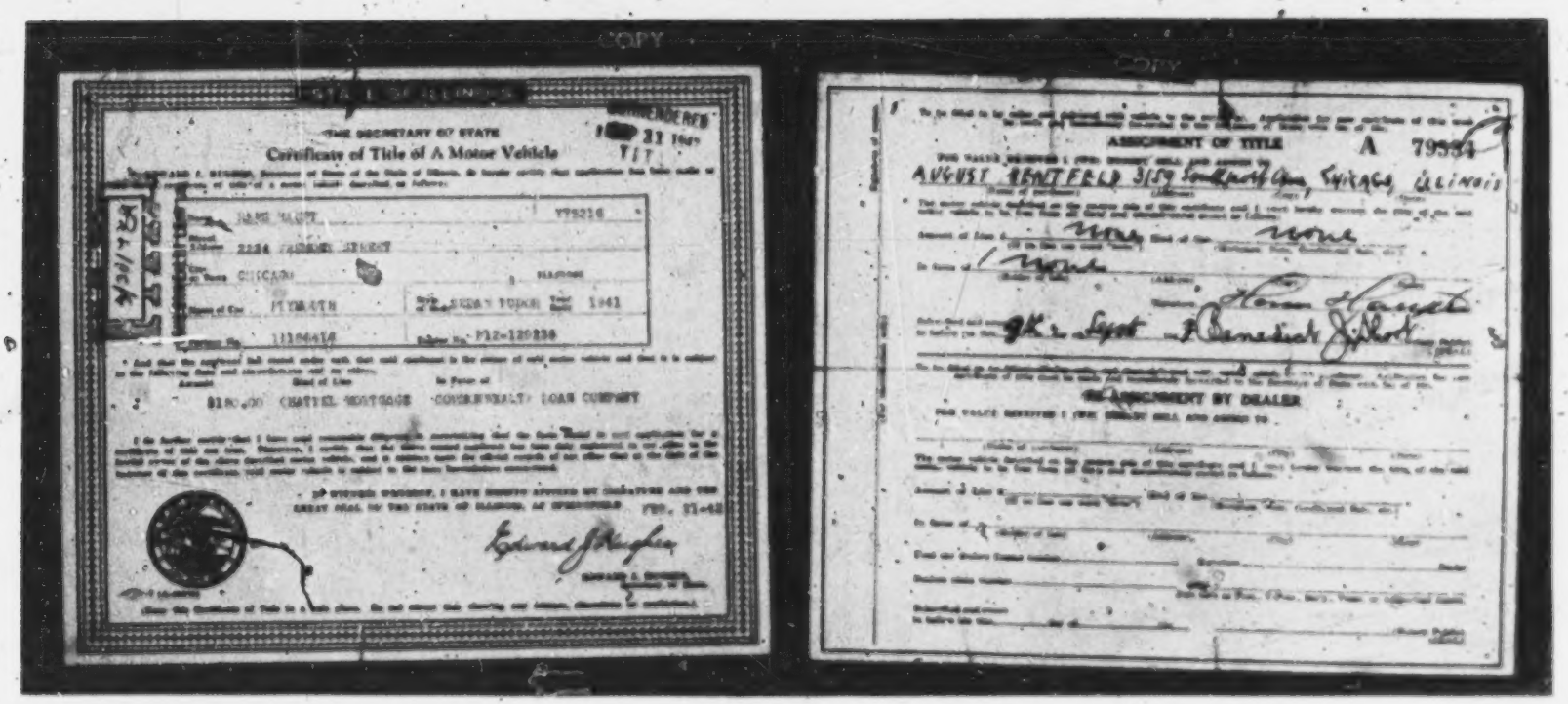
I do further certify that I have used reasonable diligence in ascertaining that the facts stated in said application for a certificate of title are true. Therefore, I certify that the above named applicant has been duly registered in my office as the lawful owner of the above described motor vehicle, and it appears upon the official records of my office that at the date of the issuance of this certificate, said motor vehicle is subject to the liens hereinbefore enumerated.

IN WITNESS WHEREOF, I HAVE HERETO AFFIXED MY SIGNATURE AND THE GREAT SEAL OF THE STATE OF ILLINOIS, AT SPRINGFIELD [illegible]

Edward J. Hughes

EDWARD J. HUGHES, Secretary of State.

(Keep this Certificate of Title in a safe place. Do not accept title showing any erasures, alterations or mutilations.)



COPY

STATE OF ILLINOIS

THE SECRETARY OF STATE

Certificate of Title of A Motor Vehicle

SURRENDERED 1 31 1942 TIT

[illegible] Y75216

2234 [illegible] STREET

CHICAGO

PLYMOUTH SEDAN TUDOR 1941

11186414 P12-120238

$180.00 CHATTEL MORTGAGE COMMONWEALTH LOAN COMPANY

IN WITNESS WHEREOF, I HAVE HEREUNTO AFFIXED MY SIGNATURE AND THE GREAT SEAL OF THE STATE OF ILLINOIS, AT SPRINGFIELD FEB. 31-42

Edward J. Hughes

COPY

ASSIGNMENT OF TITLE A 79334

AUGUST RENTFELD 3159 Southport Ave, CHICAGO, ILLINOIS

None None

None

Herman Haupt

9th & Sept F. Benedict J. Hook

ASSIGNMENT BY DEALER

140-A *Defendant's Exhibit 10*

Certificate Number 41231

STATE OF ILLINOIS

OFFICE OF THE SECRETARY OF STATE

To all to whom these Presents Shall Come, Greeting:

I, Edward J. Hughes, Secretary of State of the State of Illinois, do hereby certify that the following and hereto attached is a true photostatic copy of the application of Herbert Haupt, 1240 Hoffelder Road, Glencoe, Illinois, and 2234 Fremont St., Chicago, Illinois, for 1940 license, Certificate of Title, 1941 and 1942 Automobile license, and I further certify that License #1-339-563 was assigned the said Herbert Haupt for the year 1940, under date of November 22, 1940, Certificate of Title 775216 was issued Herbert Haupt covering Plymouth Sedan having Engine #P12-129235, and I further certify that 1941 license No. 963-732 and 1942 license 736-669 were issued the said Herbert Haupt, and I further certify that Original Title #775216 was surrendered in lieu of corrected Title as of Feb. 17th, 1942, corrected Title was assigned on the 9th day of September A. D. 1942 to August Bentfeld, 3159 Southport Ave., Chicago, Ill., the original of which is now on file and a matter of record in this office.

In testimony whereof, I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois, Done at the City of Springfield this 28th day of April A. D. 1944.

[SEAL]

EDWARD J. HUGHES,
Secretary of State.

147 In United States District Court

[Title omitted.]

Assignment of errors on behalf of Hans Max Haupt, defandant

Filed Sept. 19, 1944

Now comes the defendant, Hans Max Haupt, and, with respect to his appeal herein, says that in the record and proceedings in said cause, and in the orders and judgments entered herein and in the sentence of the defendant, there are manifest errors, and the defendant makes and presents the following assignment of errors, which he says were prejudicial to his substantial rights and which he prays may be considered upon his appeal herein, to wit:

1. That the indictment is bad for improper joinder of offenses in one indictment, and for duplicity, in that it charges the defendant in one indictment and in a single count thereof with the commission of twenty-nine separate and distinct acts, each one thereof allegedly constituting a crime; and further in this that some of said separate and distinct acts are of the same class of crimes or offenses, and some are of different classes of crimes or offenses, and punishable by different penalties, to wit:

(a) Overt acts numbered 1 to 25, both inclusive, attempt to charge the commission of twenty-five distinct acts of the crimes of treason, punishable under Section 2 of Title 18, U. S. C. by death, or at the discretion of the Court by imprison-

147-A ment of *of* not less than five years and a fine of not less than $10,000;

(b) Overt Act Number 26 charges in fact a conspiracy by and between the defendant and other persons, to commit the crime of treason, punishable under Section 34, Title 50, U. S. C. and/or under Section 88, Title 18, U. S. C. by a fine of not more than $10,000 or imprisonment for not more than two years or both;

(c) Overt Act Number 29 charges in fact a violation of the Espionage Act, as defined by Section 33 of Title 50, U. S. C., punishable under said section by a fine of not more than $10,000, or imprisonment for not more than twenty years, or both.

(d) Overt Acts Numbered 27 and 28 do not charge a violation of any known crime, and are not subject to any punishment whatsoever.

2. That the alleged offenses and each of them set forth in said indictment and charged to have been committed by this defendant, do not constitute acts of treason within the meaning of and as defined by the Constatution of the United States of America, and as stated in Section 1, Title 18, U. S. C.

3. That said indictment, herein, is substantially defective, and legally insufficient to support a judgment or conviction of the defendant, and was prejudicial to the right of the defendant to a fair and impartial trial in this, that the alleged offenses enumerated and described in said indictment as "overt acts" merely charge an intent to commit treason without alleging the commission of any act which is or would be treasonable within the meaning of and as defined by the Constitution of the
148 United States of America, and said indictment was insufficient in law to support a charge of treason.

4. That the Court erred in overruling the demurer of the defendant, Hans Max Haupt, to the indictment herein.

5. That the Court erred in overruling and denying the motion of the defendant to quash and dismiss the indictment herein.

6. That prosecution of the defendant, Hans Max Haupt, under the indictment in the above entitled cause, was and is barred by reason of certain other proceedings and certain matters of fact existing as follows:

(a) That this Honorable Court in Appeal Case No. 8165 reversed and remanded said cause for a new trial of this defendant under the indictment in District Court Case No. 33481, entitled United States of America vs Hans Max Haupt et al.; and that the trial court herein erred in disregarding the mandate of this Honorable Court to conduct a new trial in said District Court Case No. 33481, and erred in trying this defendant under a new indictment for substantially the same alleged offenses as were involved in said District Court Case No. 33481, and without first dismissing the indictment in said District Court Case No. 33481 or entering a nolle prosequi therein as to this defendant.

(b) That there was, at the time of the trial of the above entitled cause, and there still is, a former indictment pending before the District Court of the United States for the Northern District of Illinois, Eastern Division, entitled United States of America vs Hans Max Haupt, Erna Emma Haupt, Walter Otto Froehling, Lucille Froehling, Otto Richard Wergin, Kate Martha Wergin, case no. 33481, wherein this defendant is charged with the commission of the crime of treason; that a trial was had upon said indictment and that this defendant was found and adjudged guilty at said trial, from which judgment this defendant appealed to the Honorable United States Circuit Court of Appeals, for the Seventh Circuit; that, thereupon, said Honorable United States Circuit Court of Appeals reversed said judgment and re-
148-A manded the cause for a new trial, and that said trial was set for January 17, 1944, but that said trial was afterwards continued and postponed without any date being set for the same; and that the said indictment, in case no. 33481, still remains pend-

ing and undisposed of as to the said Hans Max Haupt, defendant herein:

(c) That, by order of said District Court, the defendant, Hans Max Haupt, was and is being held without bail under indictment in said case no. 33481.

(d) That the allegations of the crime of treason and the overt acts alleged in support thereof in the said indictment in said case no. 33481 are substantially the same as the allegations of the crime of treason and the overt acts alleged in support thereof in the indictment herein, and that the prosecution has failed and refused to enter a nolle prosequi in said case no. 33481, as to this defendant.

(e) That an acquittal of the defendant in the above entitled cause would leave the defendant in the custody of the marshall pursuant to the order theretofore entered by said District Court with reference to the indictment in said case no. 33481, holding this defendant without bail; and that the continued pendency of said case no. 33481 may subject this defendant to double prosecution for the same alleged offenses and otherwise embarrass the defendant in his rights.

7. That the Court erred in overruling the motion of the defendant for a Bill of Particulars to set forth the following matters with reference to the overt acts mentioned in the indictment herein, to wit:

(a) To state particularly what it is claimed that the defendant counseled and advised Herbert Haupt to do, at the time and place mentioned in overt act number one (1).

149 (b) To state particularly what matters were discussed or conferred about and between Herbert Haupt and the defendant and other persons, at the times and places mentioned in overt acts numbers four (4) and eight (8); and to state in what manner it is claimed that such matters allegedly so discussed and conferred about assisted or would assist Herbert Haupt to carry out his mission as an agent of the German Reich.

(c) To state what was done at the meeting referred to in overt act number seven (7) and in what manner it is claimed to have assisted Herbert Haupt in carrying out his mission for the Government of the German Reich.

(d) To state in what particular manner it is claimed that Herbert Haupt was or would have been assisted in securing employment for the purposes set forth in overt acts numbers ten (10) and eleven (11), by being accompanied by the defendant at such times.

(e) To state particularly in what manner and by what acts of the defendant it is claimed that the defendant harbored and

sheltered Herbert Haupt at the times and places mentioned in overt acts numbers twelve (12), seventeen (17), twenty (20), twenty-one (21), twenty-two (22), and twenty-three (23).

(f) To state particularly in what manner it is claimed that Herbert Haupt was or would have been assisted in carrying out his mission as an agent of the German Reich, by the
150 purchase of an automobile referred to in overt acts numbers thirteen (13), fourteen (14), fifteen (15), and sixteen (16).

(g) To state the place or places of the occurrences mentioned in overt act number twenty-nine (29).

8. The Court erred in receiving in evidence, over defendant's objection, testimony of witnesses for the prosecution relating to matters involving activities of Herbert Haupt, which occurred prior to the middle of June 1941.

9. The Court erred in overruling and denying the motion of the defendant, made at the close of the Government's case and again made at the close of all of the evidence in the case, to strike and exclude from the evidence in the case all testimony of witnesses for the prosecution relating to matters involving activities of Herbert Haupt, which occurred prior to the middle of June 1941, upon the grounds that the same was irrelevant, incompetent, and immaterial and related to matters not involving the charges against the defendant contained in the indictment, which said testimony tended greatly to the prejudice of the rights and interests of the defendant and deprived him of the right to a fair and impartial trial herein; and the Court erred in denying the further motion of the defendant to instruct the jury not to consider such testimony relating activities of said Herbert Haupt which occurred prior to the middle of June 1941.

10. The Court erred in receiving in evidence, over defendant's objections, testimony of witnesses for the prosecution relating to conversations with Herbert Haupt and relating to alleged
151 statements made by Herbert Haupt outside of the presence of the defendant.

11. The Court erred in overruling and denying the motion of the defendant, made at the close of the Government's case and again made at the close of all of the evidence in the case, all testimony of witnesses for the prosecution relating to conversations with Herbert Haupt and alleged statements made by Herbert Haupt outside of the presence of the defendant, upon the following grounds:

(a) All such testimony constitutes hearsay evidence which is inadmissible.

(b) Said Herbert Haupt died before the commencement of

this trial and his alleged statements are inadmissible as evidence against this defendant who was not present when such alleged statements were made.

(c) All such testimony was incompetent, immaterial and irrelevant to the issues in the case.

And the Court erred in overruling and denying the defendant's further motion to instruct the jury not to consider any testimony relating to such conversations and alleged statements made by Herbert Haupt outside of the presence of the defendant.

152 12. The Court erred in receiving evidence, over defendant's objections, the testimony of witnesses for the prosecution relating to statements alleged to have been made by the defendant herein prior to June 17, 1942.

13. The Court erred in overruling and denying the motion of the defendant, made at the close of the Government's case and again made at the close of all of the evidence in the case, to strike and exclude from the evidence in the case all testimony of witnesses for the prosecution relating to any statements alleged to have been made by the defendant prior to June 17, 1942, upon the grounds that all such testimony was irrelevant, incompetent and immaterial and related to matters not involving the charges against the defendant contained in the indictment and tended greatly to the prejudice of the rights and interest of the defendant and deprived him of the right to a fair and impartial trial herein; and the Court erred in denying the further motion of the defendant to instruct the jury not to consider such testimony relating to statements alleged to have been made by the defendant prior to June 17, 1942.

14. The Court erred in receiving in evidence, over defendant's objections, testimony of witnesses for the prosecution relating to statements alleged to have been made by the defendant prior to December 7, 1941.

153 15. The Court erred in overruling and denying the motion of the defendant made at the close of the Government's case and again made at the close of all of the evidence in the case, to strike and exclude from the evidence in the case, all testimony of witnesses for the prosecution relating to any statements alleged to have been made by the defendant prior to December 7, 1941, upon the grounds that the United States was not then engaged in any war, and that all such testimony was irrelevant, incompetent, and immaterial and related to matters not involving the charges against the defendant contained in the indictment, which said testimony tended greatly to the prejudice of the rights and interest of the defendant and deprived him of his right to a fair and impartial trial herein; and the Court erred in denying the further motion of the defendant to instruct the jury not to con-

sider such testimony relating to statements alleged to have been made by the defendant prior to December 7, 1941.

16. The Court erred in denying the motion of the defendant, Hans Max Haupt, for a directed verdict of "not guilty", made at the conclusion of the Government's case and again made on behalf of said defendant, at the conclusion of all of the evidence in the case.

17. The Court erred in denying each and all of the separate and additional motions of the defendant, Hans Max Haupt, made at the conclusion of the Government's case and again made at the conclusion of the Government's case and again made at the conclusion of all of the evidence in the case, to direct the jury to find the defendant "not guilty" upon each of the specific overt acts charged against the defendant, designated and separately numbered in said indictment, as follows:

154 "1", "2", "3", "4", "5", "6", "7", "8", "9", "10", "11", "12", "13", "14", "15", "16", "17", "18", "19", "20", "21", "22", "23", "24", "25", "26", "27", "28", "29".

18. There was a material variance between the offenses charged against the defendant, Hans Max Haupt, and the evidence introduced on the trial.

19. There was no sufficient evidence to support the verdict of the jury against the defendant, Hans Max Haupt.

20. The verdict of the jury was contrary to the law and to the evidence in the case, for the reasons set out in the written motion of the defendant for a directed verdict of "not guilty," made at the close of the Government's case and renewed at the close of all of the evidence in the case, to wit:

(1) There is no evidence in the case proving or tending to prove that this defendant has committed treason against the United States.

(2) There is no evidence in the case that this defendant adhered to, or was guilty of adhering to, the enemies of the United States.

(3) There is no evidence in the case that this defendant gave, or was guilty of giving, to the enemies of the United States aid and comfort.

(4) There was not testimony of two witnesses to the same overt act of this defendant.

(5) There was no confession in open Court by this defendant as to any overt act or charge contained in said indictment.

(6) There is no evidence in the case that this defendant adhered to the enemies of the United States and gave aid and comfort to said enemies.

(7) There is no evidence in the case showing any intent on the part of this defendant to commit treason against the United States.

(8) There is no evidence in the case that this defendant com-

mitted any of the acts alleged in the indictment as "overt acts" with intent to adhere to the enemies of the United States and to give said enemies aid and comfort, or with any intent to commit treason against the United States.

155 (9) There is no evidence in the case that this defendant gave aid and comfort, if any aid and comfort was given, to more than one person, or to any person other than Herbert Haupt.

(10) There is no evidence in the cast that this defendant intended to or did give aid and comfort to Herbert Haupt, or in any other manner assisted the said Herbert Haupt, with the intention of thereby furthering the interests of any nation with which the United States was at war, or with the intention of committing any act detrimental to the interests of the United States.

21. The Court erred in admitting improper evidence on behalf of the United States of America.

22. The Court erred in refusing to admit proper evidence offered on behalf of the defendant.

23. The Court improperly and erroneously received in evidence the testimony of divers witnesses (viz, Witnesses Fishman, Schroeder, Poppe, et al.) concerning conversations and statements alleged to have been made by the defendant prior to June 17, 1942, and some of them as early as the year 1935, and the Court improperly overruled defendant's motions to exclude such testimony from the jury, all of which testimony was highly inflammatory and prejudicial to the defendant's right to a fair and impartial trial.

24. The Court erred in permitting the Government's witnesses, Ernest Peter Burger, William Leibl, and Joseph William Haas to testify concerning conversations with Herbert Haupt, who died on or about August 8, 1942, all of which conversations constituted hearsay evidence, occurring outside of the presence of the defendant with a person (i. e. Herbert Haupt) who was deceased before the commencement of the trial and which conversations occurred prior to June 19, 1942, and prior to all of the alleged "overt acts" charged against the defendant in the indictment herein; and that all of such testimony was incompetent, irrelevant, and inadmissible against the defendant herein. And the

156 Court erred in refusing to strike such testimony on motion duly made by defendant's counsel.

25. The Court erred in admitting the testimony of divers witnesses, over defendant's objections, concerning alleged remarks supposed to have been made by the defendant and concerning occurrences relating to the defendant's son, Herbert Haupt, and concerning occurrences relating to defendant's wife, Erna Haupt,

which remarks and occurrences in some instances took place as much as six years prior to the alleged "overt acts" of treason charged in the indictment and all of which took place more than one year prior to said alleged "overt acts," which testimony, it was stated by the prosecuting attorneys, was offered on the question of the intent of the defendant in his alleged commission of said "overt acts," notwithstanding the fact that the particular utterances and alleged occurrences were made or occurred without any relationship whatsoever to the "overt acts" charged in the indictment against the defendant. Such evidence and testimony was wholly incompetent, irrelevant, and inadmissible to prove either an "overt act" or to prove a treasonable intent in committing such "overt act" and greatly prejudiced the jury against the defendant and misled the jury and induced the jury to believe that a treasonable intent on the part of the defendant could be established by proof of acts or utterances of the defendant occurring several years prior to the alleged "overt acts" charged in the indictment.

157 26. The Court erred in receiving in evidence, over defendant's objections, the testimony of the Government's witnesses Hamby and Majerczak, concerning alleged admissions or alleged confessions of the defendant, relating to divers "overt acts" charged in the indictment against the defendant, which were not confessions made in open Court, but were claimed to have been made by the defendant prior to the trial of said cause. And the Court erred in overruling and denying the motions of the defendant to strike and exclude such testimony from the case.

27. The Court erred in refusing to admit evidence offered on behalf of the defendant for the purpose of impeachment of the Government witness, Majerczak, which evidence offered by the defendant consisted in the transcript of the testimony of said Majerczak, given at a previous hearing in said cause.

28. The Court erred in refusing to receive in evidence the statute of the State of Illinois relating to accessories after the fact in the Criminal Code of the State of Illinois, viz., Illinois Revised Statutes, Chapter 38, Division II, Section 4 (State Bar Association Edition, 1943, Chapter 38, Paragraph 584, Page 1208) which was offered in evidence on behalf of the defendant.

29. The Court erred in refusing to receive in evidence a certain letter dated September 12, 1942, offered on behalf of the defendant and marked defendant's exhibit 13 for identification.

158 30. The prosecuting attorneys for the United States of America, in their arguments to the jury at the conclusion of the case, made inflammatory, prejudicial, impertinent, irrelevant, and improper argument and comments not founded upon evidence in the case, but appealing to passion, prejudice, patriotic

emotions, and war hysteria, depriving the defendant of the right to a fair and impartial trial.

31. Shortly preceding the closing arguments to the jury at the conclusion of the evidence in the case, the great invasion, or establishment of a second front in France by the military forces of the United States and our allies, was announced by radio and press as the great "Invasion Day," and the jurors had heard such radio and press reports by reason of the fact that the jurors were not confined, but were permitted to go to their homes and to public places between the regular sessions of the Court and during the recesses for luncheon; and that, nothwithstanding the excitement and patriotic emotions and fervor naturally engendered in the minds of the jurors by such news, and notwithstanding the duty and need for a deliberate and temperate inquiry and trial of the defendant upon a charge of the crime of treason, the prosecuting attorney, Mr. Finn, made impassioned reference to the soldiers of our country fighting in this war, and the United States Attorney, Mr. Woll, made further inflammatory references to the war and made particular reference to "invasion"; all of which matters deprived the defendant of a fair, temperate and impartial trial.

32. The Court improperly and erroneously sustained an objection of the United States Attorney to the oral argument on
159 behalf of the defendant made by Mr. Bertram, with reference to the testimony of the witnesses Hamby and Majerczak, and the Court improperly took issue with the statement of defense counsel and admonished counsel for the defendant, to the prejudice of the defendant and to the embarrassment of his counsel.

33. The Court, in charging the jury, improperly and erroneously gave the following instructions and charges to the jury, concerning acts, innocent and lawful per se, viz:

"53. As I have heretofore stated to you the treasonable intent of the defendant is an essential element of the crime charged herein, and before you can find the defendant guilty you must find beyond a reasonable doubt, not only that such defendant adhered to the enemies of the United States, giving them aid and comfort, but also that at the time of such alleged adherence and giving of aid and comfort, the defendant intended to do so. This does not mean, however, that you must find that the defendant went through any specific mental process as a result of which he was conscious of the specific thought, "I am going to commit treason." This is not necessary for every man in law is presumed to intend the natural and probably consequences of his acts if they are deliberately done. Anyone who is conscious of his acts and his surroundings and knowingly commits certain acts must be regarded

as intending the natural and probable consequences of those acts. These observations are, of course, not intended to cast any inferences one way or another on the defendant's intent."

"54. In this regard, motive should not be confused with intent. If a person knowingly and deliberately adheres to and gives aid and comfort to one whom he knows to be an enemy, then he must in law, be taken to intend the natural and probably consequences of his own deliberate act, and the fact that his motive may not have been to aid the enemy is no defense. In other words, one cannot do an act which he knows will give aid and comfort to a person he knows to be an enemy of the United States and then
160 seek to disclaim criminal and treasonable intent by saying that his motive was not to aid the enemy. So if you believe from the evidence beyond a reasonable doubt that the defendant as alleged in the indictment, performed one or more of the overt acts submitted to your consideration and that that act or those acts were of such a nature that the natural and probable consequence of their performance was to give aid and confort to the enemy, and if you further believe that the defendant performed such act or acts deliberately with knowledge that Herbert Haupt was an enemy agent, if you find that he was, then you may find that the defendant had the criminal and treasonable intent, since he intended to do the act forbidden by the law. Under such circumstances, the fact that you may also believe that his motive in so doing, if you find that he did, was for example, to help his son, would not in such event, change the fact that he had a criminal and treasonable intent."

"63. On the subject of the defendant's knowledge of the alleged enemy status of his son, it is necessary for the Government to prove beyond a reasonable doubt that in adhering to and giving aid and comfort to the enemies of the United States, if you find that he did so adhere to them and give them aid and comfort, the defendant, knew at the time that Herbert Haupt was an enemy agent, as alleged in the indictment. It is not necessary, however, for the Government to prove that the defendant knew in detail all of the things which this alleged enemy intended to do (if you find that he was an enemy agent and that he did come to this country as a German agent as the indictment alleges). Nor is it necessary for the Government to prove that the defendant knew all of the facts which the Government may have offered in evidence to prove Herbert Haupt's alleged enemy status. It is only necessary for the Government to prove beyond a reasonable doubt that the defendant knew that Herbert Haupt was a spy, saboteur or enemy agent, if such were the fact."

Moreover, the Court in so charging the jury, improperly and erroneously, as is set forth in said instructions and charges, num-

bered 53, 54, and 63, nullified the effect of the instruction number 37 in the Court's charge, which reads:

"37. If you are not satisfied, beyond a reasonable doubt, that the defendant's intention and purpose in acting as he did
161 was evil, that is, if you are not satisfied beyond a reasonable doubt that the defendant intended to aid and comfort the enemies of the United States the defendant must be found not guilty. If you believe the defendant's intention in doing what he did during the period from June 17, 1942, to and including July 17, 1942, was not in any way to injure the United States but merely to assist his son, Herbert Haupt, as an individual, as distinguished from assisting him in his purposes if such existed, of aiding the German Reich, or of injuring the United States, the defendant must be found not guilty."

34. The Court improperly instructed the jury upon the law and upon the facts of the case, and the Court erred in giving the instructions and charges to the jury numbered by paragraphs in the Court's Charge as follows: "8", "9", "13", "30", "32", "34", "35", "36", "39", "40", "41", "42", "46", "47" (including the subparagraphs numbered "10", "11", "12", "13", "14", "15", "16", "17", "20", "21", "22", and "23"), "49", "50", "51", "52", "53", "54", "55", "56", "57", "58", "60", "61", "63", "64", and "66".

35. The Court improperly and erroneously refused to give to the jury instructions requested on behalf of the defendant and submitted to the Court for the instruction of the jury and numbered as follows: "D-1", "D-2", "D-3", "D-4", "D-6", "D-7", "D-8", "D-10", "D-11", "D-12", "D-13", "D-15", "D-16", "D-17", "D-18", "D-19", "D-20", "D-21", "D-22", "D-23", "D-24", "D-25", "D-26", "D-27", "D-28", "D-29", and "D-20."

36. The Court erred in failing to give to the jury any proper or adequate instructions whatsoever upon matters which were contained in the refused instructions requested by the defendant.

162 37. The Court, in its charge as a whole, failed to instruct the jury properly upon the theory of the defense that acts done by the defendant to aid and comfort his son as an individual without intention to aid the enemies of the United States would not amount in law to the crime of treason; and the Court's charge to the jury did, in fact, deprive the the defendant of such defense.

38. The Court, after the retirement of the jury to consider their verdict, and after the jury had been deliberating upon their verdict for a period of approximately twenty-two (22) hours without sleep and without being able to agree upon any verdict, improperly and erroneously, over the objections of defendant's counsel, permitted the jury to return to the courtroom and then and there to hear the reading of the testimony of two witnesses for the prosecution (witnesses Hirsh and Robe) and of one witness for the defense

(witness Short) and then to retire again and resume their deliberations upon their verdict; and the defendant was greatly prejudiced and prevented from having a fair and impartial trial by said irregularity and by the repetition of the hearing by the jury of two witnesses for the prosecution and of only one witness for the defendant, and by the jury's failure to hear a second time, the examination and cross-examination of all of the other witnesses for the Government as well as for the defendant.

39. The fact that the jury were kept deliberating upon their verdict for a period of approximately twenty-eight (28) hours, without sleep and without accommodations for rest, or re-
163 tirement of the jury, operated to prejudice and did prejudice the right of the defendant to a fair and impartial trial.

40. The verdict of the jury was the result of passion, prejudice and war hysteria, induced by emotional feelings produced by the war and particularly by the tremendous war events and occurrences happening at the time of the conclusion of the trial of said cause and prior thereto, and also induced by improper, irrelevant, and inflammatory testimony concerning the defendant introduced in evidence by the prosecution and by inflammatory and prejudicial argument made by the prosecuting attorneys in their argument to the jury at the conclusion of the case.

41. The Court erred in permitting and directing the jury to consider alleged "overt acts" numbers "1", "2", "3", "4", "5", "6", "7", "8", "9", "18", "19", "24", "25", "26", "27", "28", and "29" (which overt acts were supposed to be withdrawn from the jury and upon which no sufficient proof had been made), in determining the question of the guilt and intent of the defendant to commit treason in respect to the other "overt acts" which were submitted to the jury. The jury was erroneously advised by the Court in paragraph 49 of the charge to the jury that, if they believed the defendant guilty of committing any of the "withdrawn" overt acts, even though not proved, they might, on the basis of that belief, find that the defendant had a treasonable intent in committing any of the overt acts "submitted to their consideration."

164 42. The Court erred in submitting to the jury certain "overt acts" as "possible overt acts" upon which there was not testimony of two witnesses to the particular "overt act," as required by the Constitution (viz, overt act numbers "12", "17", "20", "21", "22", and "23"); and, by reason of the fact that certain of said "overt acts so submitted to the jury were not proved by the testimony of two witnesses as required by the Constitution, the Court further erred in instructing the jury that proof of any one of said submitted "overt acts" would be sufficient to convict the defendant.

43. The evidence does not show beyond a reasonable doubt that the defendant was guilty of a criminal intent to commit treason as charged in the indictment.

44. The evidence in the case was insufficient to satisfy the burden imposed upon the prosecution to prove beyond a reasonable doubt that any alleged act was committed by the defendant with intent to commit treason against the United States, and the determination by the jury that any act was committed by the defendant with a treasonable intent must have been the result of such conjectural reasoning as could not have excluded a reasonable doubt in the minds of the jurors.

45. The evidence does not show beyond a reasonable doubt that the defendant was guilty of the charges as laid against him in the indictment.

46. The verdict of the jury is not supported by the law and the evidence.

47. The verdict of the jury is contrary to the law and the evidence.

48. The Court erred in instructing the jury to bring in a
165 general verdict, without reference to any of the twenty-nine (29) alleged "overt acts' of treason charged in the indictment. And the Court erred in failing to require the jury to specify in their verdict as to the particular overt act or acts of which they found the defendant guilty, if they returned a verdict of guilty as to said defendant.

49. The Court erred in overruling and denying the defendant's motion for a new trial in said cause.

50. The Court erred in overruling and denying the defendant's motion in arrest of judgment filed in said cause.

51. The Court erred in sending in to the jury room for the consideration of the jury the Court's Charge to the Jury in typewritten form, thereby enhancing all the errors contained in the instructions in said Charge to the Jury, and particularly the errors contained in the instructions in paragraphs 53, 54, and 63 of said Charge, which are inconsistent with and nullify the effect of the instruction in paragraph number 37 of said Charge to the Jury.

52. The Court erred in sending in to the jury room for the consideration of the Jury a copy of an indictment containing a vicious story, complete in all parts, which the Government knew or should have known that it could not prove as treason, but which was brought to the attention of the jury as a complete story in an indictment by the wrongfully adopted medium of charging each part of such story as an "overt act." This error becomes particularly vicious and misleading when paragraph 49 of the Court's Charge to the Jury is considered, wherein and whereby a belief by the jury of treasonable intent with respect to withdrawn overt

acts—not even required to be founded upon evidence—is
165 allowed to supply the treasonable intent for the submittal overt acts (which acts were innocent and lawful per se.) The Court erred in submitting and sending to the jury room for the jury's consideration on the question of intent all of the overt acts of the indictment, both those designated as "submitted" and those designated as "withdrawn", without specifically requiring that both the treasonable intent as well as the commission of a "submitted" overt act should first be proven by proper evidence, before evidence of treasonable intent concerning "withdrawn" overt acts could be considered by the jury as cumulative evidence, and as cumulative evidence only, concerning any "submitted" overt act.

53. The Court erred in sending in to the jury room a copy of the indictment for the consideration of the jury, which indictment contained a vicious narrative made up of allegations regarding many overt acts upon which the prosecution could not and did not submit any proper or sufficient evidence, and which overt acts, though ordered withdrawn from the jury, were nevertheless submitted to their consideration in determining the guilt of the defendant under the indictment, thereby permitting treasonable intent of the defendant to be supplied by a belief of the jury not required to be supported by evidence and gathered, or inferred by them, from the charges contained in the "withdrawn" overt acts. This error was particularly aggravated by the erroneous instruction contained in paragraph number 49 of the Court's Charge to the Jury.

166 54. The Court erred in permitting the jury to have in the jury room, while deliberating upon their verdict, a copy of the indictment, containing in closely interwoven manner a recital of twenty-nine (29) overt acts alleged to have been committed by the defendant, notwithstanding that the Government contended it had proven only twelve (12) of said alleged overt acts as required in cases of treason by the Constitution of the United States; and the Court further erred in instructing the jury that they could consider all twenty-nine (29) of said overt acts in determining the question of the treasonable intent of the defendant in the case.

55. The Court erred in denying the motion for a mistrial made by the defendant on account of improper, incompetent, irrelevant and prejudicial testimony given by the witness, William Max Schroeder, over defendant's objections; and the Court further erred in denying defendant's motion to exclude all of the testimony of said witness, William Max Schroeder, from the consideration of the jury. (Bill of Exceptions, pages 838 to 864, inclusive.)

56. The Court erred in receiving in evidence incompetent, irrelevant, and prejudicial documentary evidence and exhibits of

physical objects without requiring proper foundation for admitting such evidence and without requiring such evidence to be connected up with the defendant in the case.

57. The Court erred in receiving in evidence, over objection of the defendant (a) testimony of the witness, Ernest Peter Burger, concerning acts, conversations, and conduct of himself and of members of his group occurring outside of the presence of
167 Herbert Haupt and after the separation of said Burger's group from the said Herbert Haupt (Bill of Exceptions, pages 99 to 149); (b) testimony of Alfred H. Grunow concerning Herbert Haupt sleeping at the Froehling home and other matters occurring outside of the defendant's presence and not connected up with the defendant in any manner (Bill of Exceptions, pages 407 to 411 inclusive; (c) testimony of the witness, Carl Eggert, concerning certain money not produced in court and concerning acts of persons and matters occurring outside of the presence of the defendant (Bill of Exceptions, pages 603 to 606 inclusive); (d) testimony of the witness, Dora Eggert, concerning matters occurring outside of the presence of the defendant (Bill of Exceptions, pages 632 to 634, inclusive); and (e) testimony of the witness, Joseph William Haas, concerning matters occurring outside of the presence of the defendant (Bill of Exceptions, pages 646 to 650, inclusive).

58. The Court erred in permitting, over defendant's objection, improper direct examination, intimidation and leading, impeaching and suggestive questioning of the witness, Carl Eggert, by the Government's attorney, on matters prejudicial to the defendant's right to a fair and impartial trial. (Bill of Exceptions, pages 607 to 610.)

59. The Court erred in permitting, over defendant's objection, improper direct examination, intimidation and leading, impeaching and suggestive questioning of the witness, Gustave Zermer, by the Government's attorney, on matters highly prejudicial to the defendant's right to a fair and impartial trial upon a charge of treason. (Bill of Exceptions, pages 513 to 521 inclusive.)

168 And by reason of said errors and other manifest errors appearing in the record herein, the defendant, Hans Max Haupt, prays that the judgment of conviction herein may be reversed, set aside and held for naught and that he may be discharged from custody.

Dated at Chicago, Illinois, this 19th day of September A. D. 1944.

HANS MAX HAUPT,
By PAUL A. F. WARNHOLTZ,
FREDERICK J. BERTRAM,
His Attorneys.

Received this 19th day of September 1944, a copy of the foregoing assignment of errors.

(Signed) J. ALBERT WOLL.
U. S. Attorney.
By E. TULLOTSON.

169 (Note: Bill of exceptions to be transmitted separately after filing thereof.)

170 (Clerk's certificates to foregoing transcript omitted in printing.)

1-A In the District Court of the United States of America
For the Northern Dstrict of Illinois, Eastern Division

No. 4. Cr. 129

UNITED STATES OF AMERICA

v.

HANS MAX HAUPT

Bill of exceptions

Filed Sept. 22, 1944, nunc pro tunc as of Sept. 19, 1944

Be it remembered that the above entitled criminal cause came on before this Court, the Honorable John P. Barnes presiding, for trial of the issues and for the determination of the various questions presented to the Court, by demurrer, pleas, motions, objections, etc. and the following proceedings were had, to wit:

Appearances

J. Albert Woll, Esquire, United States Attorney, Richard G. Finn, Esquire, and Earle C. Hurley, Assistant United States District Attorneys, on behalf of the Government. Paul A. F. Warnhöltz, Esquire, and Frederick J. Bertram, Esquire, Attorneys for the Defendant.

Be it noted that this Bill of Exceptions consists of four (4) Volumes, under separate covers, of which Volumes I, II, and III, comprise the court reporter's transcript of the evidence and proceedings at the trial and Volume IV includes the pleadings, demurrer, written motions, exceptions, etc., in proceedings had before the trial, during the trial and after the trial, including the Charge to the Jury and instructions requested and refused, etc.

1-B [Title omitted.]

Be it remembered, that heretofore, on to wit, on the 22nd day of May A. D. 1944, the same being one of the judicial days of the United States District Court, this case came on for trial before

the Honorable John P. Barnes, one of the Judges of said Court, and a jury, upon the issues joined.

Counsel present: Mr. J. Albert Woll, United States District Attorney for the Northern District of Illinois, Eastern Division, at Chicago, and Mr. Earle C. Hurley, and Mr. Richard G. Finn, Assistant United States District Attorneys for the Northern District of Illinois, Eastern Division, at Chicago, appeared for the United States of America. Messrs. Paul A. F. Warnholtz, Frederick J. Bertram, appeared for the Defendant.

* * * * *

2 (And a jury having been duly examined and sworn, the following additional proceedings were had:)

(At the hour of 4:30 court adjurned to Tuesday, May 23, 1944, and thereafter a further adjournment was taken to Wednesday, May 24, 1944 at 10:00 o'clock A. M., and 12:00 P. M., an adjournment was taken to two o'clock P. M. of the same day.)

* * * * *

3 In United States District Court

[Title omitted.]

Before Hon. JOHN P. BARNES, Judge and a Jury; Wednesday, May 24, 1944, 2:00 O'clock P. M.

Court met pursuant to recess.

Counsel present: Mr. J. Albert Woll, United States District Attorney for the Northern District of Illinois, Eastern Divison, at Chicago, and Mr. Earl C. Hurley, and Mr. Richard G. Finn, Assistant United States District Attorneys for the Northern District of Illinois, Eastern Division, at Chicago, appeared for the United States of America: Messrs. Paul A. F. Warnholtz, Frederick J. Bertram, appeared for the Defendant.

* * * * *

4 The COURT. You may proceed, gentlemen.

Opening statement on behalf of government

Mr. WOLL. May it please the Court:

The COURT. Mr. Woll.

Mr. WOLL. And attorneys for the defendant. Ladies and Gentlemen of the Jury:

In the trial of every federal case it is customary for the attorneys for the defendant and for the government to outline for you the evidence that they expect will be produced in the case. The pur-

pose of this is to merely acquaint you along the general lines with the type of case you are to try and to help you realize the importance and trend of the evidence as it goes in.

There is one thing that I do not want any mistake about. I want to acquaint you with this fact: That you should remember this; that what I say here or what the attorneys for the defendant say here is not to be considered by you in any way as constituting evidence in this case. The only evidence that you are to consider is the evidence from the witness stand, and that gathered from documents which the Court will admit in the trial of the case. So, if I say something and it is not supported by the evidence please ignore it, as you are required to do under your oath as jurors. If the attorneys for the defendant say anything to you that is not supported by the evidence ignore it.

With that understanding, that my talking to you is merely a privilege and is not to be considered as evidence, I want to acquaint you with what I believe will be the government's evidence to sustain the charge. Of course, before we look at the evidence we ought to understand the charge rather clearly. The charge, as I have stated before, is embraced in an indictment. This defendant has been indicted by a grand jury for the Northern District of Illinois. That indictment is on file in this courtroom right now. I have a copy and I will read the parts of the indictment which I think are important to a proper understanding of the case.

The indicement charges the crime of treason. Treason is defined in the Constitution of the United States. It is the only crime defined in the Constitution. It is also defined in the criminal statute. The definition of treason in the Constitution and criminal statutes is similar and in effect is that any person owing allegiance to the United States who levies war against the United States or adheres to their enemies, giving them aid and comfort is guilty of treason. In this particular case the indictment does not charge the levying of war. So that you do not have that charge to consider.

The charge before you is the adhering to the enemy, giving them aid and comfort. That is the charge in the indictment and that is the charge you have been selected to try.

The indictment states in effect that Hans Max Haupt, the defendant you see in the courtroom, continuously and at all times from June 17, 1942, up to and including July 17, 1942, in the Northern District of Illinois and in the Eastern Division, and as a matter of fact, in Chicago, then and there being a person owing allegiance to the United States, unlawfully, feloniously, maliciously, intentionally, traitorously and treasonably did adhere to the enemies of the United States, to-wit, the Government of the

German Reich, its counsellors, armies, navies, agents, representatives and subjects with which the United States at all times
7 since December 11, 1941, has been at war, and did give to said enemies aid and comfort. That is the general allegation of treason in the indictment. The indictment then defines particulars, and explains more fully the nature of the charge of treason.

With reference to the allegiance to the United States, the indictment states that Hans Max Haupt has been a citizen of the United States at all times since the year 1930, and a resident thereof since 1923. That, of course, is an element which we will undertake to prove, namely, that Hans Max Haupt owed allegiance to the United States and not to Germany. The indictment goes on to say that on or about June 17, 1942, one Herbert Johanne William Godlove Haupt, alias Herbert Hans Haupt, alias Herbert Haupt, alias Bingo, hereinafter referred to as Herbert Haupt, an agent and representative of the government of the German Reich came into the United States, and throughout the period of time mentioned in this indictment served the government of the German Reich as a secret agent, saboteur and spy, in the carrying on of its war with the United States.

8 The indictment then proceeds to state the nature of this service that this secret agent and spy was to perform for the government of the German Reich; that the nature of this service involved, among other things, the destruction of certain war materials, premises and utilities of the United States, the receipt of money from the government of the German Reich and the disbursement of such money in connection with the procurement, manufacture and use of explosive substances and sabotage devices for and in the destruction of the war materials, premises and utilities of the United States, and the recruiting and hiring of persons, to said grand jurors unknown, to engage in unlawful and hostile enterprises, consisting in using said explosive substances and sabotage devices in the destruction of the war materials, premises and utilities of the United States.

The indictment refers to the defendant, Hans Max Haupt and points out the way in which this defendant, Hans Max Haupt adhered to this enemy and spy for the German government. The indictment goes on to say that the adherence of Hans Max Haupt to the government of the German Reich, its counsellors,
9 armies, navies, agents, representatives; and subjects, and said giving of aid and comfort by Hans Max Haupt consisted in his receiving, harboring, relieving and assisting Herbert Haupt in transporting said Herbert Haupt by automobile and in his furnishing hospitality to the said Herbert Haupt throughout said period of time, in his aiding, abetting, meeting with, assisting,

counselling and advising Herbert Haupt in and concerning said service to the government of the said German Reich, in its countenancing said service, in his carrying out requests and instructions of said Herbert Haupt in connection with his service, in his purchasing an automobile for the said Herbert Haupt, in his attempting to procure employment for him, and that this aid and comfort was given to him as the representative of the government of the German Reich and in furtherance of his mission.

The indictment goes on to state that all of his aiding and assisting of Herbert Haupt was done with treasonable intent and with knowledge. The charge is:

"He, the said Hans Max Haupt, when so adhering and giving aid and comfort to the government of the German Reich, its counsellors, armies, navies, agents, representatives, and subjects, well knew all the premises in this indictment aforesaid, and well knew the character of said service of said Herbert Haupt to the government of the German Reich, and intended to and did adhere to said enemies and gave said enemies aid and comfort."

While you were being selected as jurors, there was some discussion about overt acts. The Constitution requires that before there can be a conviction of a defendant for treason that there be proof of an overt act, an act in furtherance of this adhering, by two witnesses—that is, a minimum of two witnesses. I do not intend now to get into any legal discussion with you as to what is an overt act. I think the Court will instruct you that an overt act is an act done in furtherance or in pursuance of this giving of aid and comfort, but you will follow the instructions, I know, of the Court in determining these overt acts.

The government in this indictment has alleged some twenty-nine overt acts done by this defendant. I do not think that I will take your time to enumerate each one of the overt acts. I think they can be analyzed rather briefly by saying that these overt acts concern the harboring of this enemy, or treating with him, or advising him, or counselling him, the purchase of an automobile for him, or attempting to help him secure employment, and with meeting with him and others, discussing plans, advice given to him, and overt acts of that nature, and the accepting of money from him also. The evidence, of course, will in our opinion prove all of these overt acts.

What are the facts in the case? What does the government intend to prove to sustain the allegations of the indictment? The government will prove that this defendant, Hans Max Haupt was born in Labes, Germany, in 1894; that when he became of

age Max Haupt was married to Erna Haupt who was born in Stettin, Germany; that of this marriage there was born a son, Herbert Haupt; that this son was born in December 1919, in Germany. The government will further prove that after twenty-nine years of life in Germany, Hans Max Haupt left Germany and came to America; that he arrived in America in 1923; that he came alone; that he came to Chicago, and there he engaged in business, in Chicago; that, two years later, his wife, Erna
12 Haupt, and their son, then five and a half years old, joined the defendant in Chicago.

We will show from that time on Chicago was their home. We will show that this immigrant German family sought and received the benefits of the American way of life; that they worked here in Chicago and in surrounding suburbs; that their boy received an education in the public schools in the city of Chicago; that as this boy grew older and became of working age that he secured employment in the city of Chicago.

We will show also that after seven years of this taste of the American way of life Hans Max Haupt walked into a federal court and there in the federal court renounced all allegiance to the government of the German Reich, and renounced all allegiance to any foreign prince, potentate, state, or sovereignty and swore to support and defend the Constitution and the laws of the United States against all enemies, both foreign and domestic.

We will show that he was then accordingly given the benefit of American citizenship. We will further show that while this defendant received this American citizenship, Germany
13 was his real fatherland. We will show that he loved, admired, and preferred Germany over America.

We will show that he not only preferred Germany over America, but that he taught his boy to prefer Germany over America; that he inculcated in his boy a desire to assist Germany, and a love for Germany under the leadership of Adolph Hitler.

We will show that in 1941 Herbert Haupt began to talk to his father about going back to Germany and joining the German Army. We will show that at that time he was working for the Simpson Optical Manufacturing Company in Chicago, a firm that was then engaged in defense work and was particularly engaged in the manufacture of parts for bombs; in fact, engaged as a subcontractor in constructing the Norden Bombsight used in the airplanes of America.

We will show that working with him at the same time at the same place was a boy by the name of Wolfgang Wergin; that Wolfgang Wergin was a close friend of Herbert Haupt. We will show that his parents, Otto Wergin and Kate Wergin, were

very close acquaintances of this defendant and his wife.

14 We will show that in June of 1941, Herbert Haupt and Wolfgang Wergin disappeared from Chicago. We will show that they left Chicago and reached the Mexican border with another companion; that at the Mexican border this other companion turned back and that Herbert Haupt and Wolfgang Wergin proceeded into Mexico city; that in Mexico City they contacted the German Consul who made it possible for them to board a ship for Japan. We will show that Herbert Haupt boarded this ship and did go to Japan, landing at Tokio. This was about in August of 1941. We will show that at Tokio he sent a message to this defendant advising him that he was in Tokio, and staying at the Deiti Hotel; that while over there Herbert Haupt contacted the German Consul there and the result of that was that Herbert Haupt boarded a blockade runner and sailed, landing in France, that he went through France and finally landed in Berlin.

We will show that after he landed in Berlin he received an assignment from the German government to go to a school, a sabotage school, outside of the city of Brandenburg. Brandenburg is about a two-hour train ride from Berlin.

15 This school was on an estate about two miles out of Brandenburg. On this estate were approximately eight buildings. One of the buildings was devoted to living quarters and to class rooms. Another building contained a laboratory. There was another building which constituted a gymnasium where physical exercises were taken.

We will show also that there were warehouses and buildings on this property which were used in a practical demonstration of the force of explosive materials. On this estate also were railroad tracks. There was a pit, a testing pit, and also an observation tower, from which the tests made in this pit could be observed. There was also on this estate a shooting range and a lake.

We will show that at this school were eight individuals. These individuals were George John Dasch, Ernest Peter Burger, Heinrich Heinck, Werner Thiel, Edward Kerling, Herbert Haupt, and two others. I am not sure of their names. Richard Querin. I think now I have named them all.

We will show that this school was in charge of two instructors, and that in charge of the individuals was a German army officer by the name of Lieutenant Walter Kappe. We will show

16 that at this school these eight men learned chemical compositions, learned how to obtain these chemical compositions from various products that are commercially sold in the United States. We will show that they learned how to combine these chemical products or compositions so as to make explosives.

We will show that these persons also learned to manufacture fuses to light or ignite these explosives. We will also show that these men learned to make and to use detonators. We will show that they also learned to use and to make timing devices so that that explosive material could be set in for a particular time to explode, of course, after the placing of the explosives. We will also show that they were taught to manufacture and to use incendiary material, material that would cause fires. We will show also that they were taught secret writing.

We will show that they were not only taught how to manufacture these explosives, but they were taught how to use these explosives, to commit sabotage and damage.

We will show that in the teaching of how to use these it was not confined to theory, but it was also a practical proposition
17 with these Germans. We will show that they very thoroughly had practical tests on these proving grounds; that individual members of the school received assignments, that these assignments were such that they should be carried out with great secrecy so that the other members of the group would not apprehend them in carrying out their assignments; that after assignments had been carried out there was a discussion as to whether or not the assignments were well carried out and fully carried out.

They practiced blowing up tracks, practiced the destructive effects of explosives on metal, and all that.

After receiving this training at the sabotage school these eight men, including Herbert Haupt had a short vacation. We will show that at the time of their vacation Herbert Haupt and the other members went about their various ways and assembled later in Berlin.

At Berlin we will show that these individuals were taken around by Lieutenant Kappe, and by experts, to the industrial plants, in Germany, where the integral parts of these plants were pointed out to the eight men, and instructions given to them as to the most—or how most effectively to destroy vital parts.

18 We will show they were given plans of locks, and were taught how locks were constructed in this country, and were told how to destroy locks, that they examined locks in Germany.

We will also show that at Berlin these eight persons were given German military uniforms; they were given infantry uniforms; that they were also given eight boxes of explosives and sabotage equipment.

We will also show that this group was given approximately $200.00 in American money.

The group took these uniforms and these boxes of material and

they put them in sea bags in Berlin; that they went to Paris and from Paris they went to Lorient, France; that at Lorient, France, they were divided into two groups.

One group was headed by George John Dasch. In his group was a man by the name of Ernest Peter Burger. Another group was headed by Kerling. In his group was Herbert Haupt. There was also a man by the name of Neubauer and a man by the name of Thiel. This group, of which Herbert Haupt was one, I will call the second group, although it left Lorient first. Before this second group left Lorient, which was on the 27th day of May, each individual member of this group was given $5,000 in fifty dollar bills. That money was placed in a money bag. Each one of these eight members was also given a little over $400 in smaller denominations.

Each group in Lorient, France after receiving the money and after receiving final instructions, repacked these sea bags and put the uniforms on themselves before marching off to board a submarine at Lorient, France.

We will show that at June 1, 1942, the German submarine pulled off the shores of Florida and that this group that was headed by Kerling, and of which Herbert Haupt was a member; landed them on the shores of Florida; that they then took off their uniforms; that they buried their explosives and uniforms in the sand and they then proceeded to Jacksonville, Florida. We will show that the landing from the submarine to the shores of Florida was made in a rubber boat.

After landing they went on to Jacksonville, Florida, and there registered at hotels, Herbert and Thiel registering at the Mayflower Hotel and Kerling and Neubauer registering at the Seminole Hotel.

This landing which I stated was the 13th of June, actually took place on the 17th of June. We will show that the group stayed at the hotel until approximately June 18th. We will further show that Herbert Haupt came back to Chicago on June 19, 1942.

We will show that on the afternoon of his arrival Hans Max Haupt received a message that he had received a call from Walter Froehling. Walter Froehling is a brother of Erna Haupt, an uncle of Herbert Haupt. The Froehlings at this time lived at 3643 North Whipple Street, in the city of Chicago.

We will show that after receiving this message or call from Froehling's home that Hans Haupt went over to the Froehling home.

We will show that at that time Herbert Haupt, this spy and this saboteur, was there. We will show that Herbert Haupt then on that occasion in the presence of this defendant and these other

people told his father all about his trip to Mexico, his trip to Japan and his getting over to Germany; that he told him about his training in the sabotage school in Germany; that he told him how he had been taught to make explosives, how to use explosives, and he told him how he had come back to America for the purpose of blowing up plants and utilities and crippling and destroying, if possible, the war defense effort of America; he told him of landing from a submarine; he told him of landing with companions and he told him of coming with money and with explosives and he told him the purpose for which he had come.

We will show that this meeting lasted some time. After this meeting Herbert Haupt, the spy and the saboteur, went to the home of this defendant, and from that time on, until his arrest he was quartered and kept in the home of the defendant.

We will show that on the next day which was Saturday, June 20, this defendant and others, this defendant and his wife and Otto Richard Wergin and Kate Martha Wergin were at the Wergin home at 5634, I believe, or 5614 Wood Street on the south side of Chicago, with Herbert Haupt, this spy and saboteur; that Herbert Haupt then told the Wergins, the parents of Wolfgang Wergin, and this defendant again, of his trip to Mexico, to Japan and to Germany, and of the sabotage school at Brandenburg and of his training and of his experience there, and of his coming back to this country for the purpose of sabotaging the war effort in America.

We will show that Hans Haupt was then acquainted with the mission of Herbert Haupt. We will show that after this meeting which was Saturday night, there was another meeting held, and that meeting was held on Sunday night, and at this time all those who by now were acquainted with the mission, which were Otto Wergin, Kate Wergin, Walter Froehling, his wife, Hans Haupt, the defendant, and his wife, and of course, Herbert Haupt met again at the Froehling home.

We will show that from the Froehling home later on they went over to the Haupt home; that is, the Wergins went to the Haupt home with Herbert Haupt and the Haupts. This brings us up to Sunday, June 21st.

We will show that at this Brandenburg sabotage school Herbert Haupt was instructed to do many things. We will show that one of the things he was instructed to do was to register for the selective service. We will also show that before Herbert left America information had been received around the neighborhood that the FBI were getting inquisitive about Herbert; and we will show that Hans Haupt, when Herbert came back here was worried about that; and we will also show that

Hans Haupt was worried about the fact that Herbert had not registered for the selective service.

We will show that Hans Haupt advised and counselled his son to go "over and straighten himself out" with the Draft Board so as to stop this inquisitiveness of the FBI and throw them off the trail.

We will show that on Monday Herbert Haupt accordingly went down to the Draft Board and registered for the selective service and gave as his reason for failure to register before that he had been in Mexico mining gold.

We will show that he then went to the Federal Bureau of Investigation and told them that he had straightened out his difficulties with the Draft Board, and that he no longer was delinquent.

While at Brandenburg Herbert Haupt received further instructions. He also received instructions to secure an automobile for his group so that they could transport themselves around this country readily and quickly?

24 We will also show that he received the assignment to get the explosives which had been buried on the shore of Florida and for that purpose he volunteered to use his car and stated if the car was not in good enough condition he would get a new car so there would be no trouble, and so that they could get around faster.

We will show that Herbert told his father that he needed a car to carry out the job that he had to do in America; that he needed an automobile to get around faster so that he could do as much damage to the defense industries of America as possible.

We will show then that the father, this defendant, advised Herbert that it would not be advisable for him to purchase the car and that he, the father, would purchase the car.

We will show that accordingly, on Monday night, I think it is Monday night or Tuesday—we will show that on Tuesday evening this defendant took Herbert Haupt down to the Warner Motor Sales Company on Diversey Boulevard and there made a down payment, on an automobile, giving his own name, the defendant's name, as reference.

We will show that shortly after leaving the Warner Motor
25 Sales that this defendant had a conversation with a man by the name of Gustav Zermer. We will show that this defendant said to Gustav Zermer that he was afraid to have the boy around and that the boy would also be travelling around a lot, and that what he wanted was to have Herbert Haupt live at Zermer's house. Zermer refused.

Hans Haupt asked him if he would not let Herbert use his address as a mail drop so that in his travels around this country

he would be able to keep in contact with his father by writing letters to the address—that is, addressing them to the address of Zermer and then having Zermer deliver these letters to the defendant. We will show that Zermer agreed to this.

We will further show that now, having secured a mailing address, or a mail drop for this spy and this saboteur, the defendant the next night went back to the Warner Motor Sales and made a further down payment on the automobile and obligated himself on a conditional sales contract to pay the balance. We will show that thereupon the deal was completed and that Herbert Haupt, then the agent for the government of the German Reich, drove the automobile out of the garage.

26 We will also show that one of the instructions received by Herbert Haupt was that he was to get all the information he could about optical plants and to secure what plans he could of the workings of the optical companies and the parts upon which they were working. You will recall that I told you before that Herbert formerly worked for the Simpson Optical Manufacturing Company, which company at that time was manufacturing a part of the Norden Bomb sight.

We will show that Herbert attempted then to seek employment at the Simpson Optical Manufacturing Company. We will show that this defendant, although Herbert had told him according to his own statement that he intended to steal the plans from these optical companies, took Herbert over to the home of the superintendent of the Simpson Optical Company, where Herbert attempted to secure a job with this company.

We will show that he was ordered to come back and to report back on Thursday morning.

We will show that this defendant later went with Herbert to the foreman of the Simpson Optical Manufacturing Company, where it was stated that the foreman might be seeing Her-

27 bert around the shop in the near future.

In addition to these acts we will also show that this defendant received and concealed money given to him by his son, which money was concealed under a rug——.

Mr. WARNHOLTZ. If your Honor please——

Mr. WOLL. In the Haupt home.

Mr. WARNHOLTZ. That is objected to.

Mr. WOLL. I intend to prove it, if your Honor please.

Mr. WARNHOLTZ. The money was, if the Court please——

The COURT. Step into the jury room, ladies and gentlemen.

(And thereupon the jury retired from the courtroom, in charge of the marshal, and the following additional proceedings were had in Court, in the absence of the jury:)

Mr. WOLL. If your Honor please, I do not intend to have any

FBI agent testify as to the finding of any money in the Hans Haupt home. I do not intend to have any FBI man testify as to any envelope, or any money in an envelope, or to show that
28 money was obtained as the result of a search. I do not intend to have any FBI man testify as to the search of the Haupt home.

Mr. WARNHOLTZ. If the Court please——

Mr. WOLL. I will also state this to the Court——

The COURT. Just a moment.

Mr. Reporter, will you read the last part of counsel's statement to the jury?

(Record read as follows: "In addition to these acts we will also show that this defendant received and concealed money given to him by his son, which money was concealed under a rug—in the Haupt home.")

The COURT. What do you intend to prove?

Mr. WOLL. I intend to prove that he received and concealed under a rug in the Haupt home money given to him by Herbert Haupt.

The COURT. How do you intend to do it?

Mr. WOLL. I intend to prove it by a witness who will testify that is what this defendant told him, it was exactly what he did. This witness has no connection—no connection with any official of the government and the information was not obtained as
29 the result of any search of the home, either directly or indirectly.

The COURT. Get me the indictment. That was one of the overt acts you say you intend to prove; these overt acts?

Mr. WOLL. I do not think that your Honor intends we must just rely on overt acts. We must have evidence of treason before we can secure a conviction.

The COURT. But this is an overt act?

Mr. WOLL. I think even if we had not charged an overt act we could still prove treason.

The COURT. Maybe you could.

Mr. WOLL. It is charged in the indictment, no question about that.

Mr. WARNHOLTZ. It seems, your Honor, that the most the United States Attorney could allege is not that they will prove that the money was hidden, but that a statement was made by someone to them that the money was hidden.

Mr. WOLL. That is proof of the ultimate fact, is a method of proof.

Mr. WARNHOLTZ. The order, the restraining order, with respect to the express order states that:

"The United States Attorney is hereby restrained from
30 using any of the said property upon the trial or any infor-

mation directly or indirectly obtained therefrom or by means thereof, by means of said search and seizure aforementioned."

Mr. FINN. This proof has nothing to do with that at all.

Mr. WOLL. I might say, if your Honor please, I have told the jury very definitely if I did not prove what I say to disregard it.

The COURT. If there is very much you do not prove I will grant a new trial, I will assure you about that.

Mr. WOLL. I will prove everything I have said.

The COURT. I do not think you should have mentioned that, Mr. Woll, without taking it up in advance with the Court.

Mr. WOLL. I just thought it was very definite in reference to what had been obtained as the result of the search.

The COURT. Do not do it again. That should not have been raised.

Mr. WOLL. It is my understanding it was not obtained as the result of the search.

The COURT. Another thing you will learn if you practice
31. before me very much, do not try to talk me down if I talk to you, sir.

Mr. WOLL. I will be glad to comply, your Honor.

The COURT. The very fact that I have sustained a motion to exclude that evidence should act generally as a red flag to you and you should take that matter up with the Court before you mention it to the jury. I want you to be very careful in the conduct of this trial. If you are not I will just discharge the jury and start over.

Mr. WOLL. I regret exceedingly, if your Honor please, not having taken this matter up with the Court. I assure you it was not intentional at all. It was because, in my mind, for which I am sorry, I felt entirely that it was not anywhere near being a violation of the order that was entered. I wish to assure this Court if there is any other question arising in my mind at any time that might possibly violate any order, I shall certainly take it up with the Court.

The COURT. Let me see a copy of the Constitution, please. Where is the definition of treason?

Mr. WOLL. It is the third article, if your Honor please.
32 The COURT. "Treason against the United States consists only in levying war against them or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act or confessions in open court."

Do you intend to prove this only by admissions out of Court?

Mr. WOLL. Your Honor, if we do not prove this particular

overt act that your Honor has in mind by two witnesses, of course, a conviction could still be sustained.

The COURT. When you try to prove too many overt acts and you do not succeed there will be a new trial. I will assure you of that.

Mr. WOLL. Your Honor, our position in that regard will be this, if your Honor please: That you can prove treason by acts of the defendant, even though each one of those acts which establishes the treason is not established by two witnesses, but before you can convict, one of the alleged overt acts that has to be established by two witnesses.

The COURT. You split it too fine for me.

Mr. WOLL. I hope to be able to supply some authorities.

33 The COURT. I am telling you if you put in evidence of acts that you do not establish I will grant a new trial.

Mr. WOLL. I would like to assure this Court I most emphatically intend to, and want to follow all the Court's rulings. I am sorry if I have not taken the Court in my confidence, also the attorneys for the defendant, in this particular matter. I will add this for your Honor's satisfaction, that I will most certainly tell the jury that this is a matter we hope to establish by statements made by him. I will be perfectly willing to do that, even though it is an ultimate fact that I am attempting to establish.

The COURT. I do not think I will allow you to establish that. What you did, is you charged generally that this defendant committed treason, in general terms. Then you go on right through, and take up each and every overt act. If you can prove those overt acts by two witnesses, or by confession in open court, you are safe.

Mr. WOLL. Does your Honor intend that we shall argue that point now?

The COURT. I am telling you you may be putting error in the record. I do not think you should have said that to the jury.

34 Mr. WOLL. May I ask, so I will better understand your Honor, is it because of the fact that you feel there must be two witnesses to that matter? Is that it? Because of the fact——

The COURT. We spent a day finding out whether or not evidence of that money being hidden under the rug in the bedroom of the defendant should be excluded. I excluded it.

Mr. WOLL. Correct.

The COURT. You threw it right in. We are not going to try this case that way.

Mr. WOLL. I am sorry if I misunderstood the order. I am sorry. The search has not anything to do with the evidence at all.

The COURT. I cannot see how your evidence is admissible if you cannot prove the overt act by the testimony of two witnesses, or

by confession in open court. If you cannot prove it that way why talk about it?

Mr. WOLL. Th s why I would like an opportunity to argue some of those acts and throw new light on it.

The COURT. You can argue it.

Mr. WOLL. I would say in the Steffens case in Detroit, if your Honor please, the Court of Appeals affirmed a conviction in that one particular case——

35 The COURT. I read the Steffens case Sunday.

Mr. WOLL. In that case I believe they proved a number of overt acts but only four went to the jury ultimately, and as a matter of fact the Circuit Court of Appeals found in the case of one of the overt acts it was not properly proven.

The COURT. I remember that, and they did stretch the law.

Mr. WOLL. All I can do is to follow the decisions of the Court of Appeals.

The COURT. You will follow the decision of this Court before you follow the decisions of the Circuit Court of Appeals.

* * * * *

The COURT. Follow the decision in this Court before you follow the decision of any other court.

Mr. FINN. May I say there are a number of holdings with respect to treason on this subject of the proof of intent, in which it is held that proof of an overt act which is not proven by two witnesses, may nevertheless be considered by the jury on the question of the intent, with which other acts which are proven by two witnesses may be considered. In other words, proof of intent may be proven either by one witness to an overt act,

36 or it may be proven by an admission of an overt act, or by any number of circumstances, and that proof on the subject of intent is admissible proof on the intent with which the other overt acts are performed, that are testified to by two witnesses.

In this instance we have an admission by the defendant to a separate party, that is an admission by the defendant made to a separate party, of the receipt of a large sum of money, and the sequestration of that money under the bedroom rug. That is entirely separate and apart from the testimony of the two agents, which evidence your Honor has excluded in the case.

Of course, we expect to comply with your Honor's ruling in that respect. Nevertheless, on the question of the intent with which any other overt acts were performed, which are proven by two witnesses—this evidence is definitely admissible. For example, we have other overt acts which are proven by one witness. The evidence of that may be considered on the question of intent with which the other overt act is proven, which is testified to by two

witnesses. I would like to give your Honor decisions, I can give your Honor many decisions in that respect.

37 The COURT. Have you any more questions in mind like that question?

Mr. WOLL. As a matter of fact, your Honor, there is only about a paragraph more, perhaps two or three minutes of my statement and there is no question that I can conceive of. We have a number of cases that Mr. Finn spoke about that we can supply to your Honor.

The COURT. I can see where there might be, as Mr. Finn suggests, evidence that may be admissible on the question of intent, tending to establish an overt act.

Mr. HURLEY. That is the theory, your Honor, on which we contend it is admissible.

Mr. FINN. We have a number of decisions here to that effect, in which intent has been proven by the proof of one witness to an overt act, by proof of confession, or proof of admission of various kinds, all of which have been held admissible to prove intent with which those acts which were proven by two witnesses were performed.

The COURT. Well, bring in the jury and conclude your opening statement.

(And thereafter the following additional proceedings were had in open court in the presence and hearing of the jury:)

38 The COURT. Proceed.

(The following proceedings were had in the presence but out of the hearing of the jury:)

Mr. WOLL. There is one matter in this situation, your Honor. Herbert Haupt was arrested on June 27th. And we will attempt to prove the contact of Herbert Haupt with the defendant and that Herbert Haupt later on told them to say he had no connection with the government and in the event that they were asked to say that Herbert Haupt had gone to Mexico and not to say anything more.

Mr. WARNHOLTZ. That is of the same character.

The COURT. Proceed.

(The following proceedings were had in the presence and hearing of the jury:)

Mr. WOLL. The government will further prove that Herbert Haupt was arrested on the morning of June 27th. We will prove that that evening there were at the Hans Haupt home this defendant and a number of persons, including this defendant; that this defendant was concerned over the absence of Herbert

39 Haupt and after expressing his concern that this defendant, according to his statement, and the others agreed that they would not tell anything about Herbert, except to say that

Herbert had been to Mexico and had come back to the United States from Mexico.

Those briefly are the facts which the government intend to prove. This it intends to do by evidence introduced in this court. I fully believe that this evidence will be produced. If it is not, however, you are not to take my statement, or what I have said here as evidence. You listen to the evidence as it goes in and then you can determine whether or not what I have said here does state the facts, as I have arrayed them to you.

It is on this evidence and other evidence that I have not mentioned, or which I may have forgotten to mention, or evidence that being so involved, as you might say that we cannot point out the details of it, but which will come in as the case goes in, so that we say at the termination of all the evidence in this case, we shall ask you to return a verdict of guilty and to find the defendant, Hans Max Haupt guilty of treason.

I thank you for your attention.

The COURT. You may proceed for the defendant.

40 Mr. WARNHOLTZ. May it please the Court.

The COURT. Mr. Warnholtz.

Mr. WARNHOLTZ. Gentlemen representing the Government, and Ladies and Gentlemen of the Jury:

The COURT. Just a moment. I think we will take a short recess at this time.

(Whereupon a recess was taken.)

41 (On the coming in of Court after recess the trial of this cause was resumed as follows, that is to say:)

The COURT: Proceed.

Opening statement by Mr. Warnholtz

Mr. WARNHOLTZ: May it please, your Honor:

The COURT. Mr. Warnholtz.

Mr. WARNHOLTZ. And you gentlemen representing the Government and Ladies and gentlemen of the jury:

At the very beginning I want to join with the United States Attorney, Mr. Woll, in making this statement, that whatever I speak is not evidence, and if I should unintentionally make an error you want to disregard it and, of course, be governed by the actual evidence during the case, and I do assure you I will be very conservative in my statements.

Now, Ladies and Gentlemen of the jury you have undertaken to discharge a very solemn duty, that of a jury to decide a case of treason, a duty which demands of you sacrifice of time, of comfort and the employment of impartiality and courage, because you are to render a just verdict, and frequently to be just

42 means that you must be able to also be courageous.

The charge in this case, Ladies and Gentlemen, as you heard is that of treason, often referred to as the greatest crime which can be committed. Treason is defined in the Constitution of the United States of America as follows:

"Treason against the United States which shall consist only in levying war against them or in adhering to the enemies by giving them aid and comfort."

Now, that is the definition, but into the definition of every case we have to read two fundamental principles.

One is that a defendant is presumed to be innocent until he has been proven guilty, and when you start with this case and deal with this man, the defendant, you must deal with him as an innocent man, though he is charged with a crime. That is the law.

There is the second fundamental principle in our system of jurisprudence, in our system, a defendant cannot be found guilty until his guilt has been established beyond a reasonable doubt.

Now, with reference to the crime of treason, the framers
43 of our Constitution in their wisdom and based on experience which they gained from effort which in those days were not too remote added a third principle so that there might not be a miscarriage of justice.

That third principle reads and it was put into the Constitution:

"No person shall be convicted of treason unless on the testimony of two witnesses to t same overt act or on confession in open court."

I shall not define the words "overt act," but I believe there will be no objection if I state generally it means an act of treason, but His Honor Judge Barnes during the proceedings will give you the legal interpretation on that particular word, or words.

Now as counsel for the defendant it is my duty to stress every single point of advantage and of protection and of safeguard which the law and the Constitution of our country, the Supreme law of our land gives to a defendant charged with the crime of treason and that I shall aim to do.

Now, going over the facts of the case, I will make this general statement. It is, of course, the object of an opening statement that made by the Government and that made by the defend-
44 ant to acquaint you in advance to some extent with the facts as will be brought before you during the trial piecemeal at the time, so that you may have a better understanding and clearer view of the entire picture that will be unfolded during the entire trial. In this case it is important to observe there is only one defendant. A single defendant and that single defendant is Hans Max Haupt, the man sitting over there.

You have heard the United States Attorney talking a great deal about Herbert Haupt. Herbert Haupt is the son of Hans

Haupt and Erna Haupt, his wife, the wife of Hans Haupt. Herbert, however, is not charged in this cause with the commission of any crime. He is dead. The evidence will show he was tried before a Military Tribunal and that he died in the electric chair. However, it is true that the government has a right and to some extent it is obliged to prove a certain contention, namely, that Herbert Haupt, the man that is not the defendant in this case was sent by the German Government, as an agent of the German Government to the United States for the purpose of acting here as a spy and as a saboteur and in other capacities
45 for the German Government. This is alleged in the indictment. Therefore let us keep this clear there are no issues in this case which relate to Herbert Haupt, the man who was executed, except this one. Namely, whether or not he was sent by the German Government to the United States to act here as a spy and saboteur or in some similar capacity, and whether he subsequently acted as such. There will be no need for the government to introduce a great deal of evidence on the point whether he was sent here as a spy and saboteur. I do here and now admit on behalf of the defense that Herbert Haupt received during—about the months of April and May 1942, instructions in Brandenburg, Germany, how to construct and complete devices of destruction and of sabotage. That these instructions were given to him in a schooling course conducted by the German Government and that the course embraced the giving of information of how to employ the knowledge which they gained there for the purpose of damaging American industry in this country.

We further admit that Herbert Haupt, together with three other persons; their names are Neubauer, Thiele and Kerling who left from Lorient, France, presumably in a U-Boat—
46 I say, "presumably" and arrived somewhere on the coast of Florida, on June 17, 1942, and at that time they had with them a number of cases filled with explosives and destructive devices which, together with the German uniforms which they wore at the time when they did land. They buried them in the sands off the coast of Florida when they arrived.

The defense will show that Herbert Haupt was instructed by the officers in charge, by his superior officer, because he was at that time a German soldier wearing a German uniform, a uniform of the German army, he was instructed not to see his parents in Chicago upon arriving in America.

It will be further shown, however, that contrary to these instructions Herbert Haupt immediately upon arriving in America abandoned the mission for which he was sent here by doffing his uniform and with it he doffed everything else in connection with his mission and he disobeyed the command of his

superior officer. The first thing he did when he came to Chicago was to see his father and mother in disobedience of the orders and commands previously given him.

47 There will be no evidence, whatsoever, in this case, ladies and gentlemen of the jury, that Herbert Haupt ever committed or attempted to commit sabotage in the United States of America.

And now we will go over to the defendant. So far you heard mostly about Herbert Haupt. We will go over to the defendant Hans Max Haupt, and the only defendant in this case. The evidence will show you that Hans Haupt was born in Germany and that somewhere around 1923 he came to this country and like other people, perhaps imbued with a desire to live in the country which was freer or perhaps he knew nothing about it and what he wanted to do was to improve on his economic conditions as has been done during the last 150 years by people all over the United States. Some of them came to escape persecution in the foreign countries. Most of them came over here because they thought it was a country where they could make a better living. So did Hans Max Haupt, and about two years later his wife and his one son, Herbert, who was then around five years old followed him, and they came to Chicago, and here Hans Max Haupt spent the subsequent years. He was a man of limited education. He worked very hard at his trade, that of a bricklayer, painter, and

48 decorator, and he got along in a modest way. He had possibly very little time to become thoroughly acquainted with our American ideals, but all he did most of the time was, he just worked, and he cared for his family the best he could, trying to give them, more particularly to his son, a little more than he had himself when he was a boy; doing that which almost any father or parent would do. There is nothing wrong in that. He followed the aims of the average human being.

After he had left Germany he did not begin to hate that country. He retained love and affection for the land from which he came. Perhaps it will be brought out during the trial that before he came here he fought in the First World War, that he was a soldier for a period of four years. That he was wounded and gassed during that war as were many other soldiers of ours fighting and those of the other side, but he had not learned to hate Germany. There was nothing that caused him to hate it. He retained a great deal of affection for Germany, perhaps too much affection.

It may also be true that some evidence will be given that

49 Hans Max Haupt was unable to understand why our country should be thrown into a war, which as he saw it, did not interest us. It may be shown that respecting that point he got into arguments and one word gave the other one, he may have

made some remarks which he should not have made, but those were words, those were utterances and not deeds and what is more they are not charged as being crimes. They are not mentioned in the indictment.

The evidence, ladies and gentlemen of the jury will further show you that during the summer of the year 1941, at which time his son Herbert had become 21 years old, this son left with two other boys for Mexico. After a while there came some messages, postal cards, or a cablegram from Japan: Herbert had arrived in Japan and then nothing further was heard from him until June 1942, when Herbert suddenly had returned to Chicago. To be precise it was June 19, 1942. But only seven days had fully elapsed before Herbert was arrested by agents of the Federal Bureau of Investigation.

As far as it is possible I shall try to reconstruct by evidence during this trial exactly what Hans Haupt did during those seven days after his son had returned, and you will find
50 what he did was work from morning until night, every day of the week to supply that what is necessary to pay the expense of living. There will be no evidence—and I say none that he went out and planned the blowing up, perhaps the destruction of public buildings, et cetera, or that he conspired with anybody to do it. There will be no evidence that he saw anyone of these many destructive devices which the government may put on this table later on as exhibits.

The evidence will further show you ladies and gentlemen that during these seven days he met his son, that is right, but that any act which Hans did with reference to his son were those which are based on love and affection of a father for his child, his only child, and that these acts were acts of every day occurrence such as happens in your family and in my family every day, and nothing else but that.

There will be no evidence of any acts where the father, the defendant here, helped the enemy of the United States of America, namely, the German government, either through means of his son or in any other way, or through any other person.

51 As to the charges contained in the indictment, you will possibly have the following evidence and I want you to listen closely to these. What I talk about now are the specific charges in the indictment, the so-called overt acts. There are four overt acts which relate to the purchase of an automobile. The automobile which Mr. Woll told you he will prove that Hans Haupt bought for the purpose of carrying dynamite from Florida to Chicago. The evidence, in fact, ladies and gentlemen, will show that Herbert Haupt, the boy, before he left Chicago, owned an automobile which he used for the purpose of going to his place

of employment every day and possibly as young men used their cars to go out on Sundays, et cetera. When he left for Mexico, and later on for Japan, and ultimately landed in Germany, he left that automobile behind him. It was a comparatively new car, quite a new car, and after about a month or two elapsed and he had not returned, then his father, the defendant here, took the boy's automobile and used it. The father had an automobile too, an old one, one that was seven or eight years old, or something like that which he had used every day in his business as a decorator and painter and a bricklayer and which he used practically
52 as a truck and it had become rather old and delapidated, so he took over the boy's automobile and he started using that as a truck, the same as he had done with his own automobile. Then when Herbert returned he bought a new automobile, by "he" I mean Hans Haupt, the father, he bought that automobile to replace the one which he had taken over from his son, Herbert Haupt, after Herbert had returned.

Now the evidence may also show that upon the return of Herbert Haupt, this boy Herbert went to two foremen of the same concern where he had worked before, that very concern you heard a moment ago had something to do with some sort of a bomb sight, and Herbert went over to those people and he had connections with them before Herbert left, before he had left Chicago, about two years before he left, he went back over to these two foremen and asked if he could get the job back, and the evidence may show when he went there his father was with him. You will hear no evidence about the stealing of plans. It may also be shown, ladies and gentlemen, that at one time during these seven days Herbert Haupt was seen in the apartment of his parents. You may possibly also hear evidence that at one time Herbert Haupt was
53 seen leaving the apartment building, not the apartment, but the apartment building where his parents lived. It may also be shown by the evidence that Herbert Haupt was in the home of his uncle, Walter Froehling and that while he was there Hans Haupt also came to that home, it may possibly so show during these seven days.

This last day which the United States Attorney referred to when these six or seven people assembled in the home of Hans Haupt, assembled, I believe Mr. Woll stated to you on June 27th. That was the birthday of Mrs. Haupt, of Erna Haupt, the wife of Hans Haupt, and there were present at that time Erna Haupt and Hans Haupt; the brother of Mrs. Haupt, Walter Froehling and his wife and their two children and the two Wergins. Mrs. Haupt will be a witness in this case and the fact will also be brought out.

At no time during the trial will it be shown that the defendant

had any treasonable intent in any act which he did at any time. Thank you.

Mr. WOLL. Our first witness will be rather long, your Honor.

The COURT. How long will he take?

(Discussion off the record not reported.)

54 The COURT. Very well. We will recess at this time, ladies and gentlemen, until ten o'clock tomorrow morning. Bear in mind what I told you about discussing the case or permitting any one to discuss it with you and return here at ten o'clock tomorrow morning.

(Thereupon an adjournment was taken to Thursday, May 25, A. D. 1944 at 10:00 o'clock A. M.)

* * * * *

55 In the District Court of the United States for the Northern District of Illinois, Eastern Division, at Chicago

UNITED STATES OF AMERICA

vs.

HANS MAX HAUPT

Before Hon. JOHN P. BARNES, Judge, and a Jury.

Thursday, May 25, 1944, 10:00 o'clock A. M.

Court met pursuant to adjournment.

Counsel present: Mr. J. Albert Woll, United States District Attorney for the Northern District of Illinois, Eastern Division, at Chicago, and Mr. Earle C. Hurley, and Mr. Richard G. Finn, Assistant United States District Attorneys For the Northern District of Illinois, Eastern Division, at Chicago, appeared for the United States of America; Messrs. Paul A. F. Warnholtz, Frederick J. Bertram, appeared for the Defendant.

* * * * *

56 (Thereupon the following proceedings were had in the courtroom outside the presence and hearing of the jury.)

Mr. WARNHOLTZ. May it please, your Honor, at this time I would like to make a motion and will make a motion that all witnesses be excluded during the trial from the courtroom except the person that is testifying at the time.

The COURT. All witnesses other than the defendant and one person who will be designated by the District Attorney go out of the courtroom and remain out of the courtroom.

Mr. FINN. Pardon me, your Honor. May I ask this.

The COURT. Yes.

Mr. FINN. Your Honor, we have a lot of exhibits to take care of and we have two young men handling the exhibits that may be witnesses on some small point in the matter later on.

Mr. WARNHOLTZ. What are the two young men's names?

Mr. FINN. Mr. Murphy and Mr. Axtell.

Mr. WARNHOLTZ. No objection, your Honor.

The COURT. All right.

Mr. WOLL. One other matter before the jury come in. We
57 have been operating under an arrangement whereby if it were possible to share the table, we have a great number of exhibits and with the other two men assisting on the exhibits it will crowd us all quite a bit. I wonder if we can make some other arrangement.

The COURT. Yes. You can push your table to the right. Just push it back a little bit. Pull this other table in a little closer and then the defense may have this table.

Mr. WOLL. All right.

The CLERK. All the witnesses except the defendant and one witness designated by the United States Attorney and the two custodians of the exhibits, those designated by the United States Attorney will be excluded from the courtroom during the trial of this case. Go out of the courtroom and remain out of the courtroom except when called as a witness. Please remain in the corridor outside of the courtroom door. The burden is on all counsel to see the court's order is obeyed.

The COURT. Bring in the jury.

(Thereupon the following proceedings were had in the courtroom in the presence and hearing of the jury:)

The COURT. Good morning, ladies and gentlemen.

Several JURORS. Good morning.

The COURT. You may proceed.

58 Mr. WOLL. I will call Mr. Ernest Peter Burger.

ERNEST PETER BURGER, called as a witness on behalf of the government, after having been first duly sworn, was examined and testified as follows:

Mr. WOLL. Your Honor, so that we won't be missing these exhibits, may they all be marked at this time? I have them stamped Government's Exhibit so and so for identification, and we will use that stamp, if it is all right.

Mr. WARNHOLTZ. All right.

Mr. WOLL. We will disregard the previous marks, if that is agreeable also.

Mr. WARNHOLTZ. That is all right.

Mr. WOLL. Is that agreeable?
MR. WARNHOLTZ. Yes.
Mr. WOLL. May I proceed, your Honor?
The COURT. Go ahead.

Direct examination by Mr. WOLL:

Q. What is your name?
A. Ernest Peter Burger.
Q. Where were you born?
A. Augsburg, Germany.
59 Q. When were you born?
A. September 1, 1906.
Q. Did you at any time come to America?
A. I did.
Q. When was the first time you came to America?
A. In February 1927.
Q. How long did you remain in America?
A. I remained in the United States from 1927 to July 1929.
Q. And then where did you go?
A. I went back to Germany.
Q. And did you come back to the United States again?
A. I did.
Q. And when did you come back to the United States?
A. In the fall of 1929.
Q. And how long did you stay in the United States then?
A. I stayed in the United States from 1929 until 1933.
Mr. WOLL. Do you want some water?
The WITNESS. No, thanks.

By Mr. WOLL.

Q. In 1933 did you go back to Germany?
A. I did.
Q. Did you thereafter come back to the United States?
A. I did.
Q. And when was that?
60 A. That was in June 1942.
Q. Now, after going back to Germany in 1933, did you at any time go into the German army?
A. I did.
Q. And when did you join the German army?
A. I joined the German army August 7, 1941.
Q. And what branch of the army were you in?
A. Infantry.
Q. Do you know a German military officer by the name of Lieutenant Kappe?
A. Yes, sir.
Q. What is his full name?

A. Walter Kappe.

Q. Did you have any conversation with Lieutenant Kappe in Germany in the year 1942?

A. Yes.

Q. And as the result of that conversation, where did you go?

A. As the result of that conversation I received a special assignment and reported in Brandenburg.

Q. And where is Brandenburg?

A. Brandenburg is about two hours distance from Berlin.

Q. Now when you reported to Brandenburg, did you go to the town of Brandenburg or outside of town?

61 A. Outside of the town.

Q. And approximately how far from Brandenburg?

A. Approximately two miles.

Q. Now, what was your place where you were outside of Brandenburg?

A. The place I went to outside of Brandenburg was a former estate.

Q. What was it at the time you went there?

A. At the time I went there it still was an estate.

Q. Now will you describe this estate?

A. The estate consisted of several buildings on a wide area of about two miles square containing a farm and containing a test ground and also containing a shooting range and several other buildings.

Q. Now, when you went to this estate outside of Brandenburg, did you meet anyone else there?

A. Yes. Anyone else than who?

Q. Any other men there?

A. I did.

Q. Did you receive instructions at Brandenburg?

A. I did.

Q. Did anyone else receive instructions at the time you received them?

A. Yes.

Q. And who were those men?

62 A. George John Dasch, Heinrich Heinck, Richard Quirin, Edward Kerling, Werner Thiel, Herbert Haupt, Hermann Neubauer.

Q. Now were there studies or instructions given in a classroom and where was the classroom located?

A. The classroom was located in a small building surrounded by a wall and separated from the main building on that estate.

Q. Was there any person in charge of the instructions that were given?

A. Yes, sir.

Q. How many persons?
A. Two.
Q. And was there anyone in charge of you men at the school?
A. Yes.
Q. And who was in charge of you men at the school?
A. Lieutenant Kappe.
Q. Lieutenant Kappe?
A. Yes, s'
Q. Was he an officer, a military officer of the government of Germany?
A. He was a Lieutenant of the Infantry of the German army.
Q. How long did these classes in Bradenburg last?
A. From the 13th of April to the 30th of April.
63 Q. Until the 30th of April?
A. Correct.
Q. Now, how were these classes divided as to instructions? Was there a theoretical part and another part?
A. Yes.
Q. Divided in any way?
A. Yes.
Q. Will you explain that, please?
A. The classes were divided into a theoretical part as you said, consisting of lectures for the purpose of making us familiar with the different chemical compounds and so on.

It also consisted of assignments in the laboratory where we would make or list the compounds according to what we learned in the lectures.

We also learned or had instructions in how to prepare and make time devices of a mechanical or chemical nature. We also had instructions in how to set and apply these time devices. How to connect the time devices with the explosives. We tested these explosives actually by setting them off again through time devices.

The instructions further consisted of writing in secret ink and we also received instructions of how to buy apparently harmless drugs. How to connect these harmless drugs with certain in-
64 gredients such as flour, powdered sugar and so on which has a mixture that would form a highly destructive element.
Q. You stated before, I believe, that there was a proving or testing grounds?
A. Yes.
Q. And what instructions did you receive there in the testing grounds. What was the nature of the work that you did there?
A. Our instructions were—well, there was a space on the test ground consisting of—first to become able to approximate the effectiveness of each separate formula or compound.
Q. Of what?

A. Of explosives; of incendiaries. Second, the test ground was used to enable us to prepare the exact amount of explosives according to the thickness of the object we would attack.

The test ground was also used to give us an opportunity to approach our target under the circumstances which would be very similar to the circumstances and conditions we find over here, as for instance the railroad tracks which is located on the test ground or on the test ground, rather, which would be guarded and it would be up to us to approach this particular railroad
65 track unseen by the guards or unnoticed by men there and place our explosives onto that track, using a timing device to the explosive and make our way out of that test ground which, of course, would be similar, would represent a plant or industrial plant such as we would find over here.

Q. "Over here" you mean America or the United States?

A. Yes.

Q. Now, were there any sessions or instructions in the evenings?

A. Yes, sir.

Q. And where would they be held?

A. The instructions that we received in the evenings at Brandenburg were held in the main room; main living room of the estate.

Q. And who was to head those discussions?

A. I beg your pardon?

Q. Who would be in charge of that particular session?

A. Lieutenant Kappe.

Q. The same Lieutenant Kappe you mentioned before?

A. Yes.

Q. Now, was Herbert Haupt present at all times during the period those instructions were given in the classroom concerning the manufacture and use of explosives?

A. Herbert Haupt was present at all sessions where
66 instructions were given to us.

Q. By that you mean all sessions regardless of whether or not it was in that particular classroom or not?

A. That is correct.

Q. I will show you Government's Exhibit 1 for identification and ask you if that photograph is a true likeness of Lieutenant Kappe you mentioned?

A. This is a picture of Lieutenant Kappe.

The COURT. Did you identify it by number?

Mr. WOLL. This particular number is number 1, if the Court please.

Mr. FINN. I have just marked the first one myself, if that is agreeable, I would like the court reporter to mark these with his initials and they will be Government's Exhibits 2 to 8 inclusive.

Mr. WOLL. I will show you Government's Exhibits marked "2

to 8", inclusive, for identification, and ask you if you can identify the persons who are pictured in these exhibits, which are photographs, if you will identify each picture, give the number of the exhibit on the back. I will show you first Government's Exhibit 2 for identification and ask you who that is?

A. This is a picture of George John Dasch.

67 Q. I will show you Government's Exhibit 3 and ask you whose picture that is?

A. Herbert Haupt.

Q. And is that exhibit a true and correct reproduction of the likeness of Herbert Haupt?

A. It is; yes.

Q. I will show you Government's Exhibit 4 for identification and ask you whose picture is in that exhibit?

A. This is a picture of Heinrich Heinck.

Q. I will show you Government's Exhibit 5 and ask you whose picture is pictured there?

A. This is a picture of Edward Kerling.

Q. I will show you Government's Exhibit 6 and ask you whose picture is pictured there?

A. This is a picture of Hermann Neubauer.

Q. I will show you Government's Exhibit 7 and ask you whose picture this represents?

A. This is a picture of Richard Quirin.

Q. I will show you Government's Exhibit 8 for identification and ask you whose picture is pictured there?

A. This is a picture of Herman Thiel.

Q. Now, each person whose picture you have identified is the same person that you mentioned here in the courtroom as being in the school at Brandenburg?

A. Yes.

68 Q. The Herbert Haupt you mentioned in your testimony is the Herbert Haupt whose picture you just identified?

A. Yes.

Q. I believe you stated there was a lake on this estate; is that so?

A. There were two lakes.

Q. Two lakes?

A. Yes, sir.

Q. And was there a lake entirely within the estate?

A. Yes.

Q. What would you say the size of that lake was; can you give me any idea?

A. I don't know.

Q. Well, was that lake used for any purpose?

A. No.

Q. Now, you say there was another lake?

A. There was a large lake, or something a border of the estate of the area.

Q. Was that lake used for any purpose?

A. Yes.

Q. And what was the purpose that that lake was used for?

A. We had several landing maneuvers on that lake.

Q. Were you instructed how to approach and perform those landing maneuvers?

A. We were instructed—we would try to land in a rub-
69 ber boat, on the lake, as fast as possible on the beach.

Q. Were you informed at that time by anyone of the school as to the purpose of landing; how to land from this rubber boat?

A. We were told we would have to know this for our future assignments.

Q. Now did you mention in your testimony that you were instructed in the use of incendiaries?

A. No; I didn't mention that.

Q. Were you instructed in such articles?

A. Yes.

Q. And what is an incendiary?

A. An incendiary is a highly inflammable material which would be very hard to extinguish and which would spread and also start fires with any material it would get in touch with.

Q. And were you instructed in any particular type of incendiary?

A. We were instructed in several types of incendiaries.

Q. Well, what types were you instructed in?

A. We were instructed the so-called slow hard burning incendiary and also in the fast burning incendiary.

Q. I believe you stated that you were also instructed
70 how to use timing devices?

A. That is right.

Q. Will you explain what you mean by a timing device?

A. A timing device is used to delay explosives or the fire if it is connected with an incendiary.

Q. And were you instructed in various types of time devices?

A. Yes.

Q. And what types were you instructed in?

A. We were instructed in mechanical and chemical time devices.

Q. And do you know what a chemical device is?

A. Yes.

Q. Were you instructed, tell me your instructions in regard to a chemical time device?

A. We were instructed in a great number of chemical time devices, that is, in the manufacture of a timing device and also in the use of this particular time device. We were instructed to prepare for instance a chemical timing device consisting of a sulphuric acid which would be separated from a chemical compound by cellophane and which would eat through this cellophane in a certain time, according to the thickness of that separating cellophane. It would eat through and get in contact with
71 that chemical compound which would result in an immediate high dangerous flame; highly destructive flame.

Q. Now, did you have the various types of chemical devices in the school at Brandenburg?

A. Yes, I did.

Q. Can you describe any of the chemical devices that you handled or were instructed in?

A. One of the chemical time devices we used or we were instructed in consisted of an ordinary pocket watch whose hands would be connected with a wire and upon touching it it would result in a contact and the contact would result in the explosion.

Q. Now, going back to the shooting field, what instructions did you use in connection with the railroad tracks that were on the estate?

A. We used the railroad tracks on the test grounds to place, first the school of how to form a—how much of our explosive material we would use to destroy this particular type of track.

Second we would prepare our chemical compound or that explosive and we would place our explosives on the tracks. We would also attach to the explosives our timing device in such a manner that any passing train would automatically bring
72 that timing device to explode, that is the timing device and the explosives.

Q. Now, you mentioned a tower on the estate, was that used for any purpose?

A. Yes.

Q. That was used for tests also?

A. For observation purposes, also for our protection.

Q. Was the tower protection for the buildings?

A. It was a very strong stone building.

Q. Were experiments on these explosive materials carried on in what was called a pit in the estate?

A. Yes.

Q. Now you stated before in the evening there would be instructions headed by Lieutenant Kappe?

A. Yes.

Q. In general, what was the nature of the instructions; what would they consist of?

A. They were concerned with the personal history of each one of our crew.

Q. Was there a discussion concerning such history, instructions given in that regard?

A. There were constant instructions.

Q. Over how long a period did those instructions last?

A. These instructions lasted from the first day until the last day.

73 Q. And was Herbert Haupt present at those instruction periods?

A. Herbert Haupt was present.

Q. Did Herbert Haupt receive any instructions from Lieutenant Kappe?

A. Yes.

Q. Concerning his identity?

A. Yes.

Q. And what were those instructions that he received—wait just a minute—go ahead.

A. Herbert Haupt received instructions regarding his identity to use his own name in a vicinity or among people where he was known; on the other hand he also received orders or instructions to use a different name in the vicinities where he was unknown.

Q. Did he receive any further instructions about what he was to do immediately upon coming to America or to the United States?

A. Yes.

Q. And what were those instructions?

A. Herbert Haupt received instructions to proceed from the landing point which at that time was not designated, to proceed from his landing point directly to Chicago. He also received orders to procure an automobile and put this automobile to the disposal of our group or our troup.

Q. By "your group" you mean the men whose pictures
74 you have identified?

A. Yes. He also received orders to procure information and details concerning the optical industry in Chicago, especially of the Norden Bomb sight, and furnish us information which was done in order to equip us to carry out our assignments. He also received order to register with the army. He also received an order to contact trustworthy political people and to deposit a certain amount of money with them as a contingent fund for our groups in case of emergency.

Q. Did you receive any particular instructions?

A. Yes.

Q. Now, were the instructions received while you were in Brandenburg or were they received later, the ones you have mentioned as to Herbert Haup, were they received in Brandenburg?

A. These instructions were officially given us on the last day at Brandenburg.

Q. Were the instructions concerning this matter discussed down at Brandenburg, is that right?

A. That is correct.

Q. Now, was there any discussion at Brandenburg about the use to be made of this car, of this automobile which you
75 state Herbert Haupt was instructed to obtain?

A. Yes.

Q. What was that discussion?

A. The purpose for purchasing an automobile was to, first, remove our explosives from the place where they were cached, or hidden or buried, back to a place which in the meantime would be prepared. The second purpose for a car was to give us range for our operations.

Q. Now, was there a discussion concerning the identity of any others of the group at Brandenburg?

A. Yes.

Q. And do you recall any particular individual about whom this discussion resolved or concerned?

A. Our discussions concerned the identity of each one of our members, concerned each one.

Q. And there was no definite instruction concerning that, however, until later, is that correct: in other words, was your identity established at the school or later on?

A. My identity was established at the school.

Q. And what was your identity?

A. Well, you see——

Q. Did you receive instructions as to your identity at the school or before you left Germany?

76 A. I received instructions as to my own personal identity.

Q. And what were the instructions what you were to do?

A. My orders—my final orders in that regard——

Mr. WARNHOLTZ. I object to this, your Honor, unless he is asked where the final orders were given.

Mr. WOLL. I think I can clear this up now.

Q. You received instructions at Brandenburg; you received final orders some place else?

A. At Brandenburg.

Q. At Brandenburg?

A. Yes, sir.

Q. About when did you receive these final orders?

A. At the last day at Brandenburg.

Q. And from whom did you receive your final orders?

A. From Ligutenant Kappe.

Q. And what were your final orders which you received?

A. Concerning my identity?

Q. Yes.

A. The final order concerning my identity was to proceed to Chicago, to open a commercial artist studio and to join the Artist Guild or organizations and to build up a complete picture of the ordinary American commercial artist. This identity was built up on my previous experience as a commercial artist or due to my ability to work as a fashion designer.

77 Q. Do you recall any other orders concerning any other member of the group about identity?

A. I recall the orders given Hermann Neubauer who at some time worked in the United States as a cook. His experience as a cook would enable him to buy a small restaurant as a berth for the actual activities and this restaurant, in turn, would enable us to help him inconspicuously.

Q. Where were these final orders to those individuals given?

A. Also in Brandenburg.

Q. And by Lieutenant Kappe?

A. Yes, sir.

Q. Now did you and the members who attended this class with you in Brandenburg receive any assignment as to the work that was to be performed in America?

A. Yes.

Q. And from whom did the group receive the assignment?

A. From Lieutenant Kappe.

Q. Lieutenant Kappe?

A. Yes, sir.

Q. And how was this assignment received?

A. We received this assignment in writing.

78 Q. And will you tell us the manner of receiving this in writing; how was the writing distributed?

A. At that time the entire group assembled in the class room and Lieutenant Kappe announced officially that our destination would be the United States; that he would now hand us a typewritten sheet of paper containing the specific assignments of each group. At the same time he divided us into two groups. He also furnished us with a map showing, with blue and green pencil marks and the exact targets we would have to approach in the United States. He also gave us an outline of what we really had to do after we landed in the United States.

Q. Now after you received this piece of paper containing the assignments and after you received the maps and orders with the assignment sheets and the maps, then what did you do?

A. We had to hand them back to Lieutenant Kappe.

Q. And do you recall the assignment that your group had?

A. I do.

Q. Will you state it please?

A. The assignment sheet of my group which was called or designated group number 1 contained first, the names of group number 1. It also informed us that we had the western
79 section of the western country—yes, that is right—the western half of the United States——

Q. Now, may I interrupt you? Never mind, go ahead.

The WITNESS. (Continuing). It also contained a number of names of different plants we would have to attack. It also contained that we would receive our information concerning optical industries from Herbert Haupt even though he was a member of group 2.

Q. Now you say that your assignment contained the names of some plants?

A. Yes.

Q. Where were those plants located; in what country?

A. The United States.

Q. Do you recall the names of any of those plants?

A. I recall the name of Alcoa.

Q. Is that the Aluminum Corporation of America?

A. That is the name of a small town. It was the name of the Aluminum Corporation of America. I also recall one plant which was located in Oregon and one was located in the vicinity of Los Angeles, and there was one plant down in Tennessee where they—I don't recall the exact name.

Q. Now, you say that you were at that time divided into two groups?

A. Yes.

80 Q. So that the assignments you received, or your group received was the assignment of the western part of the United States?

A. Correct.

Q. I now ask you what point west?

A. There was an imaginary line starting at Chicago north running straight down south.

Now the country west of this line was assigned to group number 1.

Q. And that was your group?

A. That was my group.

Q. And who composed that, do you know?

A. George John Dasch, Heinrich Heinck, Richard Quirin, and myself.

Q. Did you see the assignment of group number 2 at that time?

A. I did.

Q. Do you recall any of the assignments that group number 2 had?

A. I do.

Q. And what was that assignment, the best you recall?

A. I recall one assignment, namely Hellgate Bridge, the eastern part, as I recall of the country and a plant outside of New York and I forget the other name.

Q. Now you state that it was Herbert Haupt who was
81 to have the undertaking regarding this as to both groups 1 and 2?

A. That is right.

Q. He was to furnish the information for both groups 1 and 2?

A. Yes, sir.

Q. What was that information again?

Mr. WARNHOLTZ. That is objected to unless it is now shown, he shows that information, what information came from group 1 or 2.

By Mr. WOLL:

Q. When you received your assignment, you were assigned to group number 1?

A. Yes.

Q. You stated that assignment was in written form?

A. Yes.

Q. And was there anything on your assignment, written assignment relating to any activities of Herbert Haupt?

A. Yes.

Mr. WARNHOLTZ. Objected to. That has been asked and answered before.

Mr. WOLL. You object because it has been answered?

Mr. WARNHOLTZ. That very point was answered and it would only be cumulative.

82 Mr. WOLL. It may have been answered and if so, I will drop that.

The COURT. Are you pressing the question?

Mr. WOLL. I am informed by counsel that it has been answered, but I would like to clear it up.

The COURT. Well, let him answer it again.

By Mr. WOLL:

Q. Now, was this assignment that Herbert Haupt had a written assignment which you received as group 1?

A. Yes.

Q. And what was that assignment?

A. May I correct that point?

Q. Yes.

A. The assignment that Herbert Haupt had was written on both sheets of paper, on both assignments, an assignment to group number 1 and an assignment to group number 2, because he hap-

pened to be the only one who was authority and was familiar with optical matters.

Q. Now, at any time there was a discussion at this school in Brandenburg concerning the identity was the name of any particular optical company mentioned?

A. Yes.

Q. Do you recall the name of that particular Optical Company that had been mentioned?

A. There was only one particular name mentioned and
83 that was the name of the Simpson Optical Company in Chicago connected with the Norden Bomb sight.

Q. Do you recall what instruction, if any, Herbert Haupt received in connection with the Simpson Optical Company?

A. Yes.

Q. What were those instructions?

A. Herbert Haupt had the assignment to procure information of the incendiary lay-out and also information about vital machines, and parts in this particular Simpson Optical Company. He had to furnish us with this information in order to equip us to attack the different particular parts, and if I may say, all important bottlenecks in this plant.

Q. You said he furnished the information to the group?

A. Yes.

Q. Was anything said about employment in the Simpson Optical Company?

A. Yes.

Q. What was said?

A. Herbert Haupt received the order that he had to find employment with optical plants, due to his former experience in this line of work and to use this employment to get information——

Mr. WARNHOLTZ. I object to that answer and I ask that it
84 be stricken. The question asked referred to the Simpson Optical Company.

The COURT. Overruled. That objection isn't good. I will rule that objection is not good unless made by the examining counsel.

By Mr. WOLL:

Q. When did the classes end at Brandenburg?

A. On the 30th of April.

Q. And what happened then, did you have a vacation?

A. Yes.

Q. Did the group later reassemble?

A. Yes, sir.

Q. Now, when you say "group" I mean group 1 and group 2?

A. Yes.

Q. Where did the groups reassemble?

A. In Berlin.

Q. And was Lieutenant Kappe there when they reassembled in Berlin?

A. Yes.

Q. Now, did you receive any further instructions in Berlin?

A. Yes.

Q. In connection with these instructions did you go anywhere in Berlin with Lieutenant Kappe?

A. Yes.

Q. Where did you go? When I say "you," I mean the
85 group?

A. During the final instructions we received in Berlin, we visited a large railroad yard, railroad repair shop, or railroad yard, where we received detailed instructions on how to destroy railroad engines; how to destroy railroad stock, rolling stock and railroad installations.

The COURT. And railroad what?

A. Railroad installations. We also visited during our stay in Berlin a canal lock in order to learn the vital parts of this particular lock. We received directions and information by an expert of this lock compared with American locks. We received information of the exact dimensions of locks in the United States. We also learned the difference between the gates of the different locks, how they would open sideways, backwards, upwards, and so on. We also were pointed out where the vital parts, moving parts, and hinges of the different locks are located and how to place the explosives on these parts and what particular place. We also learned the thickness of the gates and of the locks we would find in the United States and we were informed as to how the amount of explosives we would have to prepare for to place in the locks over here. That covered our instructions in Berlin.

86 Q. Now did you visit any industrial plants in Berlin?

A. Not in Berlin; no,

Q. Did you visit any industrial plants outside of Berlin?

A. We did.

Q. Did you visit those industrial plants outside of Berlin after you reassembled in Berlin?

A. Yes.

Q. And what type of plants were those?

A. We visited several aluminum and light metal plants.

Q. Did you receive instructions when you visited those plants?

A. Yes, sir.

Q. What were those instructions?

A. Our instructions regarding the aluminum plants or light metal plants were given us by experts for different particular plants. We were shown the vital parts and installations of those

aluminum plants. It was pointed out to us how to destroy these vital parts. How to find these vital parts. How to place our explosives or what to do in regard to these vital parts. We were instructed how to paralyze this particular aluminum plant and cause a breakdown. We were shown how to remove a high
87 tension power line for the purpose of cutting off the current or supply of articles of power which in turn would cause the pots and aluminum ovens to freeze. We were also shown how to destroy transformers and equalizers.

Q. Now did you eventually leave Berlin?

A. I did.

Q. Now, before leaving Berlin was there any equipment furnished you, when I say "you" I mean the entire group?

A. Yes.

Q. And what equipment was furnished the entire group of which Herbert Haupt and yourself were members?

A. We received a number of boxes containing equipment. We also received uniforms. We received shovels. We received identification papers.

Q. Now what was the uniform you received; will you describe them, please?

A. The uniforms we received consisted of shoes, socks, trousers, coats and caps.

Q. And were those uniforms, uniforms used in any branch of the German army or navy?

A. They were certain uniforms used by the marines and infantry which is equivalent to your marines and navy.

Q. A marine and infantry?

A. Yes.

88 Q. Of what government?

A. German government.

Q. Now, you say you received some boxes?

A. Yes.

Q. How many boxes did you receive? That is, the entire group.

A. Eight boxes.

Q. Eight boxes.

A. Yes, sir.

Q. What were in the boxes you received?

A. The boxes contained TNT blocks. The boxes also contained chemical equipment and fuses and detonators, certain timing devices, fountain pen sets and a great number of small items which were used in our operations.

Q. Now, were these boxes at that time divided between the two groups?

A. Yes.

Q. And how many boxes did each group get?

A. Four boxes.

Q. Now, was anything else distributed at Berlin other than the boxes containing the explosive materials, devices and the uniforms?

A. We also received shovels and sea bags.

Q. And sea bags?

A. Yes, sir.

Q. Anything else that you recall?

A. Identification papers.

Q. When you say "identification papers" what do you mean? Will you describe them?

89 A. I mean we received two types of identification papers.

Q. Yes.

A. Namely a draft registration card and also social security card.

Q. One was a draft registration card made out to the individual or were they a blank?

A. There was one in blank and also one made out in the name of the individual.

Q. There were two draft cards, you say?

A. For each man.

Q. For each man; one was made out in blank and the other was made out to the man?

A. Yes, sir.

Q. How about the social security card? Were there one or two of those, if you recall?

A. As I recall we received two social security cards. I am not sure, though.

Q. Now, then, before you said that I believe Herbert Haupt received instructions from Lieutenant Kappe to register for the army. What do you mean by registering for the army?

A. That Herbert Haupt had the orders to register under the National Service Registration Act.

90 Q. National Service, therefore the Registration Act?

A. Exactly.

Q. Selective Service Act?

A. That is right.

Q. Now, when did the two groups leave Berlin?

A. We left on the 22nd of May.

Q. Of what year?

A. 1942.

Q. Did Lieutenant Kappe leave with the group?

A. Yes.

Q. From there where did the group go?

A. Paris, France.

Q. And from Paris where did the group go?
A. We went to Lorient.
Q. France?
A. Yes.
Q. Now, do you recall when the two groups landed in Lorient with Lieutenant Kappe?
A. We landed on the 26th of May.
Q. And how long did the second group stay in Lorient, France?
A. Group number 2 stayed from the 22nd to the 27th. I think, that is right.
Q. Now, between the 26th of May and the 27th of May, were any instructions given to group 2, any further instructions given concerning their destination?
A. Their mission.
Q. Or the purpose of their destination?
91 A. Yes.
Q. Do you recall those instructions?
A. These instructions were first concerning me.
Q. Yes, what was done or said in that regard at Lorient, France at that time?
A. At that time Group number 2 received their money belts and also another amount of money, around $400 in smaller denominations.
Q. And how much did each individual member of group 2 receive in the money belt?
A. Each member in group number 2 received an amount of $5,000 in the money belt in addition to the $400 in small denominations.
Q. Now what was the denominations of the $5,000 the group received in the money belt?
A. The denominations of money in the money belts were $50 bills.
Q. $50 bills?
A. Yes, sir.
Q. And the four hundred odd dollars was made up in smaller denominations?
A. In smaller denominations.
Q. Who was the leaders, who was appointed leader of the second group?
A. Edward Kerling.
Q. Did he, as leader, have any money in addition to
92 the $5,000 and the four hundred odd dollars?
A. Yes.
Q. How much did he have?
A. Edward Kerling had charge of the emergency fund of group number 2 which was divided or placed in two separate zipper bags.

Q. In what?
A. Zipper bags.
Q. Zipper bags?
A. Yes.
Q. How much was in one bag?
A. In one bag was approximately $60,000.
Mr. WARNHOLTZ. How much?
A. $60,000.

By Mr. WOLL:

Q. How much?
A. $60,000.
Q. And the other bag?
A. Around ten thousand dollars.
Q. Now you stated group 2 eventually on the 27th, I believe, left Lorient, France?
A. Yes.
Q. Now, do you recall anything else that occurred in Lorient, France, in connection with the second group before it left in regard to any instructions from Lieutenant Kappe of furnishing any material or equipment to the second group?

93 A. I only recall an announcement made by Lieutenant Kappe that now they would leave to fight for Germany. That they would now enter the submarine. That they would now go on our mission which would bring them over to the United States, that they would have to consider, or that we would have to consider ourselves as soldiers and that this second group which is about to leave, and should all do our best for the advantage of our country.

Q. Now before the second group left was anything done concerning packing the sea bags?
A. Yes.
Q. Did you assist in packing the sea bags?
A. Yes.
Q. Now, will you describe what you did in assisting in packing the sea bags of the second group?
A. When Lieutenant Kappe announced that group number 2 should prepare itself to get ready to leave, we all were in our civilian clothes, so group number 2 took their sea bags and their equipment downstairs in a smaller room in the hotel and changed from their civilian clothes into the uniform which we took out of that sea bag and we unpacked therefore that sea bag, took out the boxes, distributed these uniforms to each particular

94 member of that group and repacked the civilian clothes in the boxes into the sea bags.

Q. Now going back to Berlin, the date before you left Berlin, were any contracts drawn of any kind?

A. Yes.
Q. Or were any contracts drawn at any time?
A. Yes.
Q. And where were they drawn?
A. In Berlin.
Q. In Berlin?
A. Yes.
Q. And was that just prior to your leaving for Lorient?
A. It was prior to our leaving for Paris.
Q. For Paris?
A. Yes.
Q. Now, did you sign one of these contracts?
A. I did not, no.
Q. Did you see any of these contracts which were signed?
A. I saw all of the contracts that were signed.
Q. And were the contracts that you saw similar or were there differences in the contracts?
A. The contracts were exactly alike as to their text. They differed in the names of relatives and in the amounts of money.
Q. And did they differ also in the parties to the
95 contract?
A. Yes.
Q. And who was the party, you understand what I mean, the party to the contract?
A. Yes.
Q. Who was one party to the contract?
A. One party to the contract was represented by Lieutenant Kappe.
Q. Who did he represent?
A. The German army.
Q. And was that party the German army a party to each contract you saw?
A. Yes.
Q. And then the contracts were they made with the individual members of the group, is that correct?
A. Yes.
Q. Now, do you recall any conditions of the contract?
A. I do.
Q. Just briefly did the German government contract to pay any amount of money to the individuals?
A. Yes.
Q. Now, why didn't you sign such a contract?
A. Because I was a member of the German armed forces. I was a soldier and still am a German soldier, not an agent, not a paid agent——

96 Mr. WARNHOLTZ. If your Honor please, that is asking for a conclusion and I object to the question and ask that the answer be stricken.

The COURT. Oh, no, let it stand.

By Mr. WOLL:

Q. Now, after you helped pack the sea bags of the second group, did you leave the hotel with the second group?

A. We left the hotel to carry out, to help carry out the equipment to a waiting car.

Q. Did you assist in putting the equipment in the car?

A. I did.

Q. Then what happened?

A. Then the car left and we said good-bye, gave each other our best wishes, reminded each other we would see each other again over here and the car left.

Q. Now, to go back to the hotel, did you go back to the hotel in Lorient?

A. I did.

Q. Did Lieutenant Kappe go with the second group in the automobile?

A. He did.

Q. Now after he left did he come back to the hotel?

A. Yes.

Q. Did he come back the same day?

A. Yes, sir.

97 Q. After he came back did your group receive any instructions?

A. We were informed that group number 2 is now on the way to the United States.

Q. Did he say how it was on its way?

A. Yes, told us the submarine was waiting at the train when they arrived at the pier and they entered the submarine; that he had introduced group number 2 to the Captain of that particular submarine and that he waited and watched them leave the harbor——

Mr. WARNHOLTZ. If your Honor please I object to all this and ask that it be stricken. This was after Herbert Haupt left. Herbert Haupt was not present and is not present and we cannot possibly refute this. Herbert Haupt was out of the picture at that time.

The COURT. Overruled.

By Mr. WOLL:

Q. Will you continue, please?

A. Lieutenant Kappe informed us that the group number 2 was now on its way to the United States, that he had brought

them on to the pier. That he had entered the submarine with them to introduce them to the Captain of that submarine and he also informed us that our submarine was expected to come the next day.

98 The COURT. We will take a recess at this time, ladies and gentlemen.

(Thereupon a recess was had and on the coming in of court after recess the trial of this cause was resumed as follows, that is to say:)

The COURT. Proceed gentlemen.

Mr. WARNHOLTZ. May it please the Court I move that all the instructions given to Herbert Haupt, the answers given by the witness with reference to it be excluded from the record on the ground they constitute hearsay. Herbert Haupt is dead. The defendant in this case was not present. It seems conversations should not be admitted between Herbert Haupt and some other person and to ask what instructions were given is just circumventing the question. He should ask what did he say, did he say so and so, and conversations are hearsay and they should not be admitted.

The COURT. What do you say?

Mr. FINN. Your Honor, there are numerous cases including the Cramer case in which an identical proceeding was approved, as to these questions. The nature of the mission which

99 Herbert Haupt was over here on——

The COURT. Overruled. Proceed.

By Mr. WOLL:

Q. I believe just before the recess, Mr. Burger, you stated that Lieutenant Kappe told you that a submarine for your group was on the way, words to that effect?

A. Yes.

Q. Did that group eventually leave Lorient, France?

A. Yes, sir.

Q. When did your group leave?

A. We left on the 28th.

Q. 28th?

A. 28th of May, 1942.

Q. Prior to your group leaving did Lieutenant Kappe give you any further instructions?

A. Yes.

Q. What instructions did you receive from Lieutenant Kappe, that is, your group?

A. We received instructions or orders.

Q. Orders?

A. We had to prepare ourselves——

Mr. WARNHOLTZ. Your Honor, I shall object to this for the simple reason this does not prove the status of Herbert Haupt.

Mr. WOLL. Herbert Haupt and this man were together.

100 : The COURT. Well, if for no other reason, I think each one of these eight men are being considered together. Aside from that general proposition the witness has testified that Herbert Haupt furnished both groups with information concerning one certain class of industry in this country and if for no other reason I think the activities of the other four would be pertinent here. Objection overruled.

By Mr. WOLL:

Q. What was the order that you received?

A. We received the orders to prepare ourselves to get ready to leave at six o'clock in the evening.

Q. Did you prepare yourselves to leave?

A. We did.

Q. What did you do in preparing yourself to leave?

A. We changed from civilian clothes into our uniforms. We repacked our material and got ready to leave.

Q. What material did you have with you in your group?

A. We had four boxes.

Q. What was in the boxes?

A. Containing TNT blocks and additional equipment.

Q. What other material did you have?

A. We also had two shovels.

Q. I believe you stated you changed into military uniforms?

101 A. That is right.

Q. What did you do with your civilian clothes?

A. We repacked our civilian clothes into our sea bags.

Q. What else did you put into the sea bags?

A. We put the shovels in the sea bags—box and our clothes.

Q. Boxes, you mean?

A. Yes, sir.

Q. Did you receive any money at any time at Lorient, for your group?

A. No.

Q. Did you finally leave the hotel?

A. Yes; we left the hotel.

Q. When I say "you" I mean your group.

A. Yes, sir.

Q. Did Lieutenant Kappe go with you?

A. Lieutenant Kappe went with us.

Q. And where did you go?

A. We went to the pier in the harbor of Lorient.
Q. When you got there what did you do?
A. We entered the submarine.
Q. What kind of a submarine was it?
A. It was a German submarine.

Q. And was the submarine in command of any par-
102 ticular person?

A. The submarine was commanded by a German captain.
Q. By a German Captain. Do you mean a captain in the military forces of Germany?
A. I mean a Captain of the German navy.
Q. Did he wear a uniform?
A. Yes.
Q. What uniform did he wear?
A. The uniform of the German navy.
Q. Was there a crew on this submarine?
A. Yes, sir.
Q. Did they wear uniforms?
A. Yes.
Q. What uniforms did they wear?
A. They wore the uniforms of the German navy.
Q. At the time that your group boarded the submarine, were you in the uniforms you have described before?
A. Yes.
Q. Did Lieutenant Kappe go on the submarine with you?
A. Yes, sir.
Q. Did he remain on the submarine?
A. Well, he remained in the submarine for about a half an hour.
Q. And did you receive any further instructions at that point?

A. I believe I have to correct that word, substitute
103 a different word for instructions.

Q. Was there a conversation at that time with Kappe and your group?
A. We had a conversation but among German soldiers there are no conversations or instructions. We have orders.
Q. You refer to those as orders?
A. There was not at any time—there was not at any time any private conversation, or any way of communicating which could be described as conversations. We are soldiers. That is, we were subject to military command given by Lieutenant Kappe and we received these orders and he gave them, but there were no conversations, there was not any conversation in the general sense of conversations.
Q. In other words, you received orders, did not carry on conversations with commanding officers?

A. Yes. We received final orders as to how to behave on board ship, as to the length of our voyage and I would say for about a half an hour, and we were also introduced to the commanding officer on board. Then Lieutenant Kappe left.

Q. Who was the leader of that group?

A. George John Dasch.

Q. Who were the members of the group?

104 A. Heinrich Heink, Richard Querin and myself.

Q. Who were the members again of the second group who left Lorient the day before you did?

A. Edward Kerling, he was the leader of group number 2, Herbert Haupt, Herman Neubauer and Werner Thiel.

Q. When you were on the submarine, was there any distribution of money?

A. Yes.

Q. Will you describe that distribution for us, please?

A. Shortly before we landed on Long Island we received our money belts and we also received $418 in smaller denominations than $50 bills.

Q. Was there money in the money belts?

A. Yes.

Q. How much money was in each money belt distributed to the group?

A. Approximately $5,000.

Q. Did Kerling, as leader of your group have additional funds?

A. Kerling was not the leader of my group.

Q. Did Dasch, as leader of your group, have any additional money?

A. Yes.

Q. How much did Dasch have as leader of the group?

105 A. Dasch had an emergency fund of $82,000.

Q. At any time while you were in Bradenburg or Berlin or Lorient, did you receive orders concerning the use of this emergency money?

A. Yes.

Q. Where did you receive those orders?

A. We received orders on several occasions.

Q. You received orders several times in regard to that?

A. Yes, sir.

Q. Do you recall the first orders you received in that regard?

A. I recall that I signed for the receipt of $5,000 in Berlin, which, I of course at that time had not received at all. I received that money on board the submarine.

I also recall an order given to us by Lieutenant Kappe that an emergency fund existed, that this contingent fund should be located or deposited with some politically trustworthy person—naturally

in the sense of the National Socialist Party—and that in case of the loss of our leader, our group leader, each one of us would know where to get that, to get a hold of that money.

Q. When you just gave your testimony, did you intend
106 to mean that when you used the word "political" acquaintance or friend, did you mean someone sympathetic to the party, the German party, is that what you meant?

The COURT. "Politically trustworthy" is what he said.

By Mr. WOLL:

Q. What did you mean by "poltically trustworthy?"

A. When I say "politically trustworthy" I mean in the sense of the National Socialist Party, of the German National Socialist Party.

Q. You do not mean anybody in politics in America?

A. Not at all.

Q. You stated that you received this money before you landed at Long Island. Did the submarine land at Long Island?

A. Yes.

Q. On what day?

A. On the 13th of June 1942.

Q. What time of day was that, about?

A. It was between twelve o'clock and one o'clock in the morning.

Q. In the morning of the 13th?

A. Yes.

Q. Did your group leave the submarine?

A. Yes.

107 Q. How did you leave the submarine?

A. We left the submarine in a rubber boat?

Q. Who was in the rubber boat?

A. George Dasch——

Q. The members of your group?

A. Yes.

Q. Any one else?

A. Two sailors.

Q. What equipment, if any, did you have in that rubber boat?

A. We had the sea bag containing that box of explosive. We had a suit case containing $82,000, and also had our civilian clothes and shovels when we landed.

The COURT. What?

A. When we landed.

Q. When you landed?

A. Yes.

By Mr. WOLL:

Q. After landing did the sailors who rowed you to the shore remain?

A. No.
Q. What did they do?
A. They went back to the submarine.
Q. Did the submarine leave immediately upon your landing?
A. I do not know.
Q. What did you do after that? What did you do
108 after you landed?
A. I carried a sea bag—no, I carried a suit case to land and started to change my clothes.
Q. When you say "suit case" will you describe that object for us?
A. The suit case was a regular standard leather suit case, and in the cover of that suit case was a money place.
Q. You spoke before about a zipper bag, and I believe you stated the leaders of the second group had two zipper bags?
A. Two zipper bags.
Q. When you say suit case do you mean the same type object or a different type object?
A. Different type.
Q. After your group landed on the shore of Long Island, then what happened as far as the explosives were concerned, or explosive material?
A. We buried the boxes containing the explosives in the sand on the beach.
Q. Did you finish your answer?
A. On the beach.
Q. What happened to the shovels?
A. We buried them, also.
Q. What did you do with the uniforms?
109 A. We buried the sea bags containing the uniforms close by where the explosives were buried.
Q. You took your uniforms off on the beach, did you?
A. Yes.
Q. Then dressed into civilian clothes?
A. Yes.
Q. Do you know approximately at what point on Long Island you landed?
A. Amagansett.
Q. Amagánsett?
A. Yes.
Q. After arriving at the beach did you go to a railroad station?
A. Yes.
Q. What was the name of the railroad station?
A. Amagansett, Long Island.
Q. Did you leave that railroad station?
A. I did.

Q. Where did you go?
A. Went to Jamaica.
Q. Did you do anything in Jamaica?
A. We bought clothes.
Q. Was that the entire group?
A. Yes.
Q. Did the group buy clothes or just you?
A. When we came to Jamaica we split into two groups and
110 each—two each, and bought our clothes, and finally proceeded to New York.
Q. Who was your companion then in going to New York from Jamaica?
A. My companion was George John Dasch.
Q. That left two to travel into New York?
A. That left Heinrich Heink and Richard Quirin.
Q. Do you know when you landed in New York?
A. Yes, on the 14th.
Q. 14th of June?
A. 14th of June 1942.
Q. When you say "New York" do you mean New York City?
A. I mean New York City.
Q. Were you subsequently apprehended by agents of the Federal Bureau of Investigation?
A. Yes.
Q. On what day were you apprehended?
A. On the 20th of June.
Q. On the 20th of June? A. Yes.
The COURT. What day did you get to New York?
A. On the 14th of June, 1942.

By Mr. WOLL:

Q. Did you at any time receive any orders from Lieutenant Kappe as to when you would begin your operations in America, in the United States?
A. Yes.
111 Q. Where did you receive those orders?
A. In Berlin.
Q. Did Lieutenant Kappe give those to you?
A. I beg your pardon; not only in Berlin but also in Brandenburg.
Q. What were the orders that he gave, were the orders given to your two groups?
A. Yes.
Q. What were the orders received by the two groups concerning when they were to begin operations in the United States?
A. The orders, when we should begin our operations in the

United States were three to four months after our landing, provided we had at that time established our identities.

Q. And by establishing identities, you mean the identities you referred to earlier in your testimony?

A. That is right.

Q. Concerning those identities, did Kerling have an identity to establish?

A. Yes.

Q. Do you recall what his identity was to be?

A. Kerling's identity was built up on his previous experiences as a domestic employee, a gardener, and so on. He was
112 supposed to buy a farm which would later on serve not only as a meeting place for the rest of his group, but also as a hiding place for the explosives which in the meantime would be brought up from the landing place.

His buying a farm would also enable him to buy inconspicuously drugs and chemicals which we could later on use to prepare explosives.

Q. Had any orders been given by Lieutenant Kappe concerning any meeting of the leaders of the group in the United States?

A. Yes.

Q. Do you recall where those orders were given?

A. They were given in Brandenburg.

Q. Do you recall the orders in that connection?

A. I do.

Q. What were those orders?

A. I recall distinctly that the leaders of those two groups were to meet in Cincinnati on July 4, 1942.

I also recall that each member of the group had to give an address of some trusted person over here, where in an emergency case the other members of his group could find him, or could find out his whereabouts.

Q. At the school at Brandenburg was Lieutenant Kappe
113 called upon at any time to make a decision as to Herbert Haupt taking part in this mission?

A. Yes.

Q. Do you recall the circumstances surrounding that?

A. I believe I recall the circumstances.

Q. Did Herbert Haupt at that time inform Kappe of his feeling concerning making the mission?

A. Yes.

Mr. WARNHOLTZ. I object to that question, your Honor, regarding any statements made by Herbert Haupt as being hearsay, not in the presence of the defendants, and Herbert Haupt is dead.

The COURT. You may step into the jury room ladies and gentlemen. Come into chambers, gentlemen, with the reporter.

(And thereupon the jury retired, and thereafter Court and counsel entered the chambers of the Court where the following additional proceedings were had, in the absence of the jury:)

The COURT. What do you propose to show?

Mr. WOLL. I propose to show that at that time there was a question raised because of Herbert Haupt's age, whether
114 or not he would be sufficiently strong to carry out this mission; that Kappe determined that he would be a proper person to send on this mission because he had shown his courage in running the British blockade; that he had received the German Iron cross; that at that time it was determined definitely that Herbert Haupt would be one of the members of the mission; that discussion was had, as I remember—you can correct me, Mr. Finn, that discussion was had on Herbert Haupt in his presence.

Mr. FINN. As I understand it, and I think I am correct, some question arose because of Herbert Haupt's age, as to whether or not he was courageous enough to go through with the mission. Kappe explained to the rest of the group that this boy was a hero, that he won the Iron Cross by breaking through the blockade; therefore they should consider him as such, as a hero, no question but that Herbert Haupt could go through with the mission. That is the basis.

Mr. BERTRAM. I think that would be very prejudicial. There is only one purpose for which this testimony is being received, which is to establish the status of Herbert Haupt. They want to show now that he was not only a member of the groups and so forth, but that he was an outstanding member, and to pile in
115 something which is just like poison, that creates prejudice and it is not necessary for the purpose they are offering it for. I understand this is not being offered against the defendant. There is a limitation of proof.

Mr. FINN. That is right. This is being limited to that issue.

Mr. BERTRAM. It was the status of Herbert Haupt, and it does not establish the status of the defendant and it is putting in something which is very detrimental and harmful to the defendant, who is the father of this boy.

Mr. WARNHOLTZ. This is not connected with the overt acts. That is the actual purpose of it, to connect with the overt acts. The only question here was evidence of overt acts, and the status of that, whatever it may be.

Mr. FINN. How does this convict of an overt act? You have raised the point when you said Herbert Haupt abandoned the mission when he came over here.

Mr. WARNHOLTZ. You brought in that the money was to be in $50 bills.

Mr. FINN. Certainly, for the sabotage. You have raised the issue by your opening statement by saying that Herbert Haupt immediately abandoned the enterprise when he came over
116 here, so it would appear to me that we would have a right to show that he was enthusiastic about the enterprise.

Mr. WOLL. If he had not brought that in, nevertheless I think it would be competent evidence.

Mr. WARNHOLTZ. That is action subsequent to the time that I stated that he abandoned it. This is for the purpose of establishing the status of Herbert Haupt, as an enemy. Without that none of this would be admissible because the defendant was not present and the only excuse that you have is to establish his status as an enemy.

Mr. FINN. Does not the overt act of being a British blockade breaker constitute part of the mission, as establishing the enemy status?

Mr. BERTRAM. I would submit, it tends to prejudice and create prejudice in offering that evidence.

Mr. FINN. That is not prejudicial. This is a question. Let us assume that you had a question like this, that Herbert Haupt was a German soldier. We would be allowed to prove that he was a private, a lieutenant or a major. The fact that he was a major, that he had won the Iron Cross would be somewhat similiar.

Mr. BERTRAM. He has already proven that. We have ad-
117 mitted the instruction in Germany. That has been proved for that purpose. Now, you are trying to pile in something that is going to be damaging to this defendant who is on trial here, something that is personal to Herbert rather than affecting the status of his father.

Mr. WOLL. If I may add a word. I think it particularly important in view of the opening statement, to show that we have established the enemy status, which you say he later on abandoned. I think we are entitled to show whether this man was made a reluctant member of his group or whether he was an authorized enthusiastic member of it, and whether he by his acts or statements indicated a desire to go through with this mission. I think that we would be in a position, in view of the opening statement to have this evidence in there. I think it would be admissible despite the opening statement, but I think particularly in view of the opening statement it certainly is admissible.

The COURT. Well——

Mr. BERTRAM. If I may say, without interrupting, that I think all of this is hearsay testimony that cannot be combated in any way by the defendant, because we were not present and Herbert, the subject of it, is dead.

The COURT. I think the government has the right
118 to show, certainly—has a right to show that the person with whom the defendant is alleged to have adhered was an enemy of the United States. It has that right. If it did not have that right it could not prove its case at all.

You have a right to show that the person to whom the defendant is alleged to have adhered was an enemy of the United States. I think the government has a right to show the character and characteristics of that enemy.

Mr. BERTRAM. Can they show it by conversation?

The COURT. Yes, I think so.

Mr. WOLL. I should like to refer, your Honor, if I might, to this point and to indicate exactly what his testimony was in the last trial, because I do not think you have had the benefit of that.

The COURT. You intend to show it?

Mr. WOLL. I believe my recollection is correct. My recollection of what he will say—I will have to look at the record to make certain, but I think I am correct——

The COURT. The fact that counsel for the defense in his opening statement indicated that it is going to be at least an
119 element of the defense that Herbert Haupt, the person to whom the defendant is alleged to have adhered, and to whom he is alleged to have given aid and comfort, abandoned his enterprise upon his arrival in this country and thereupon ceased to be an enemy—I think is only incidentally involved. The fact that this testimony that is now proposed to be presented might in a sense negative that idea is only incidental—an incidental effect of the testimony.

I do not think the Court needs to go any further than to say that the government has a right to show the character and the characteristics of the enemy that the defendant—or to whom the defendant is alleged to have adhered, and to whom he is alleged to have given aid and comfort. I accordingly overrule the objection.

(And thereupon the following additional proceedings were had in open court in the presence and hearing of the jury.)

The COURT. Proceed, Mr. Woll.

Mr. WOLL. Will you read the last question, Mr. Reporter?

(Record read as follows: "Did Herbert Haupt at that time inform Kappe of his feelings concerning making the mission?"

120 "A. Yes".)

Q. Do you recall where this took place?

A. Yes.

Q. Where?

A. In Brandenburg.

Q. Pardon me?

A. In Brandenburg.

Q. That was during the period of time that your group was receiving instructions?

A. Yes, sir.

Q. Will you describe the circumstances surrounding it?

A. At the time of that incident some of the members of our group expressed their doubts as to the ability of Herbert Haupt because of his age. He was very young, and because of his lack of previous experience.

Lieutenant Kappe informed us at that time that Herbert Haupt had received the Iron Cross, second class, for his merits on board the blockade breaker and his coming from Japan to Germany.

He also informed us that he was perfectly capable of carrying through his particular assignments, and that he himself would guaranty to the full extent for the loyalty of Herbert Haupt.

Q. Did you testify concerning the distribution of the money to members of the second group? Do you recall whether I asked you about that?

121 A. I do not recall that.

Q. Was money distributed to the second group in your presence?

A. Yes.

Q. Where did that distribution take place?

A. Lorient.

Q. Who distributed the money?

A. Kappe.

Q. How much did each member of that group receive? First in the money belt, how much was received by each member?

A. Each member of the group, group number 2 received $5,000 or approximately $5,000 in the money belt.

In addition to that each member received around $400 in smaller denominations, smaller than $50 bills.

Group number 2 on that occasion also received orders concerning money in the adversity fund.

Q. Did Herbert Haupt receive the $5,000 or approximately $5,000, and also the smaller sum of $400?

A. Herbert Haupt at that time received $5,000 in a money belt and he also received $400 in smaller bills; and he also received a zipper bag with the order to take particular care of that

122 zipper bag because it contained approximately $10,000.

Q. Did you know the denominations of the $5,000, that was given to Herbert Haupt?

A. Yes, sir.

Q. What denomination bills were they?

A. They were $50.00 bills.

Mr. FINN. May this be marked for identification, Government's Exhibit 9?

(The object produced by counsel was marked for identification, "Government's Exhibit 9.")

By Mr. WOLL:

Q. I will show you Government's Exhibit 9 for identification, which is a zipper bag and ask you if you recognize that bag?

A. I do.

Q. Do you recall the first time you saw this bag?

A. Yes, sir.

Q. And where was it that you saw this bag?

A. In Berlin.

Q. At the time you saw it in whose possession was it?

A. In the possession of Edward Kerling.

Q. Did you later on see this bag in Lorient, France?

Mr. WARNHOLTZ. I cannot hear that, Mr. Woll.

Mr. WOLL. I am sorry.

123 Q. Did you later see this bag anywhere else?

A. Yes, I did.

Q. Where did you see it?

A. I later saw this zipper bag in Paris, when I carried it myself, and I again saw this zipper bag on the train from Paris to Lorient. I also saw this particular zipper bag in Lorient.

Q. Did you carry this particular bag from Berlin to the train, going to Paris?

A. Yes.

Q. After you reached Paris did you handle this bag at all?

A. I beg your pardon? Will you repeat the last question?

Q. Did you have charge of or carry this bag from Berlin to Paris?

A. No.

Q. Where did you say you carried it?

A. I carried this bag from our hotel in Paris to the railroad depot in Paris.

Q. After that did you carry this bag at any time?

A. No.

Q. At the time when you saw it in Lorient, France, it was in whose possession?

A. In Edward Kerling's possession.

124 Q. Did you see this bag leave the hotel at Lorient, France?

A. Yes, sir.

Q. In whose possession was it then?

A. In Edward Kerling's possession.

Q. I will refer you to this bag and ask you if this bag is in the

same condition now as it was at the time you saw it leave the hotel in Lorient, France, in Kerling's possession?

A. It is not in the same condition.

Q. What is different about it?

A. The bottom is opened, or sliced, I think you call that sliced—anyway opened up. The bottom is loosened and I see where there is a piece cut out.

Q. Was there more than one zipper bag?

A. Yes, sir.

Q. At the hotel in Lorient, France?

A. Yes, sir.

Q. How many zipper bags were there?

A. Three zipper bags.

Q. And who had respectively the zipper bags at Lorient, France?

A. One zipper bag was carried in the possession of
125 Edward Kerling. One zipper bag was carried by Herbert Haupt. One zipper bag was carried by Werner Thiel at the time I saw them in Lorient.

Q. Do you know whether or not those zipper bags were identical?

A. They were not identical.

Q. What was the distinction between the zipper bag, if you recall?

A. I recall one zipper bag with two leather straps on the side as distinguished from the other two zipper bags which had, to the best of my recollection no leather straps on the side.

Q. Do you know where these zipper bags came from?

A. Yes.

Q. Before that I will say, will you state do you know where this zipper bag came from?

A. Yes.

Q. Where did it come from?

A. From Berlin.

Q. Do you know where it was manufactured or made?

A. Yes.

Q. How do you know that?

A. Because when I was at Brandenburg, Lieutenant Kappe asked each member of the groups if they had in their possession any original American equipment like clothes, bags, suit
126 cases, underwear and so on; and he collected two zipper bags which originated from the United States and I recall that one zipper bag, namely this one here you are holding in your hand was manufactured according, corresponding to the other, the original American zipper bags.

Q. Did you at any time examine the bottom of this zipper bag?

A. I did.

Q. Where did you examine the bottom of it?

A. I examined the bottom of this zipper bag in the hotel in Paris.

Q. Did you see any of the contents of it?

A. I did not.

Q. Could you tell anything at that time by opening the bag and glancing into it, could you see whether it had any contents or not?

A. Do you mean in the bottom?

Q. I am speaking of the bag, as you looked into the bag, could you see anything in the bag?

A. No.

Q. Do you know whether there was anything underneath the bag?

A. Yes, I knew there was underneath, that there was money underneath.

Q. Was there a place in the bottom of the bag?

127 A. There was a place in the bottom of that bag.

Q. What was in the place in the bottom of the bag?

A. When Kerling had it, a false bottom of this bag with approximately $60,000.

The COURT. We will recess at this time, ladies and gentlemen until two o'clock.

Remember my instruction concerning discussion of the case, and do not discuss the case, nor permit any one to discuss it with you. If any one attempts to communicate with you about the case report that fact at once to the court.

Return here at 2:00 o'clock promptly, please.

(Whereupon an adjournment was taken to two o'clock of the same day, being Thursday, May 25, 1944.)

* * * * * *

128 In the District Court of the United States for the Northern District of Illinois, Eastern Division, at Chicago

UNITED STATES OF AMERICA

vs.

HANS MAX HAUPT

Before Hon. JOHN P. BARNES, Judge, and a Jury

Thursday, May 25, 1944, 2:00 o'clock P. M.

Court met pursuant to recess.

Counsel present: Mr. J. Albert Woll, United States District Attorney for the Northern District of Illinois, Eastern Division,

at Chicago, and Mr. Earle C. Hurley, and Mr. Richard G. Finn, Assistant United States District Attorneys For the Northern District of Illinois, Eastern Division, at Chicago, appeared for the United States of America; Messrs. Paul A. F. Warnholtz, Frederick J. Bertram, appeared for the Defendant.

* * * * *

129 The COURT. Bring in the jury. Proceed, gentlemen.

ERNEST PETER BURGER, resumed the stand for further examination, after having been previously sworn was examined and testified as follows:

Direct examination (resumed) by Mr. WOLL:

Q. You are the same Mr. Burger who was testifying before the noon recess, are you not?

A. Yes.

Q. I believe I was asking about Government's Exhibit 9 for identification and I believe you stated that this was the bag that Kerling carried out of the hotel in Lorient, France, prior to going on the submarine?

The WITNESS. A. Yes. May I ask your Honor's permission to correct my statement I made before recess?

The COURT. Yes.

By Mr. WOLL:

Q. What statement is that, Mr. Burger?

A. I made the statement that this particular bag——

Q. Government's Exhibit 9?

A. Yes, contained $60,000. I made a mistake and I realized this mistake as soon as I walked out of the courtroom. This
130 particular bag contained approximately $10,000. I confused this bag with the other one.

Q. Are you certain at this time that is the bag that Kerling carried out of the hotel at Lorient, France?

A. I am quite sure.

Mr. WOLL. All right.

The WITNESS. That this bag was given to Herbert Haupt to take care of, and to deposit this bag with a trustworthy person, as I mentioned before, of his acquaintance.

Q. Was there a second bag which contained $60,000?

A. Yes.

Q. But this one contained the $10,000?

A. Yes.

Mr. WOLL. Mark this "Government's Exhibit 10."

(Thereupon the document was marked as requested, "Government's Exhibit 10" for identification.)

By Mr. WOLL:

Q. I will show you Government's Exhibit 10 for identification and ask you if you recognize this exhibit?

A. I recognize this money belt is the very same money belt I myself wore at the time of landing in the United States.

131 Q. Was that the money belt which was issued to you?

A. This is the money belt which was issued to me, and signed by me with my initials.

Q. Was this money belt identical with the other money belts that were issued to the other members of the group?

A. Yes.

Mr. WARNHOLTZ. Mr. Woll, may I see it, please?

Mr. WOLL. Yes. Mark this "Government's Exhibit 11" for identification.

(Thereupon the document was marked as requested, "Government's Exhibit 11" for identification.)

By Mr. WOLL:

Q. I will show you Government's Exhibit 11 for identification and ask you if you recognize that exhibit?

A. I recognize this shovel as a shovel I received in Berlin and I, myself, attached this piece of rope to it.

Q. Now, I believe you stated there were other shovels also issued to the two groups?

A. Yes, sir.

Q. How many shovels were issued to each group?

A. Two shovels.

132 Q. Making a total of four shovels to the entire group?

A. Correct.

Q. And this is the shovel you personally had?

A. Yes.

Mr. WOLL. Mark these "Government's Exhibit 12 and 13" for identification.

(Thereupon the documents were marked as requested, "Government's Exhibits 12 and 13" for identification.)

By Mr. WOLL:

Q. I will show you Government's Exhibit for identification number 12 and Government's Exhibit for identification number 13 which are two shovels and ask you if these shovels are identical with the shovels which were issued to the two groups?

A. This shovel is exactly the type of shovel which we received in Berlin from Lieutenant Kappe.

Q. Is there anything peculiar about these shovels, Government's Exhibits 12 and 13?

The COURT. Let me see one of those.

The WITNESS. A. There was one peculiarity which is that this shovel is not extended army type shovel used, standard army type shovel used by the German army.

Q. It is not the standard type?

A. It does not correspond in dimensions and in general
133 appearance with any shovel used by the German armed force in regular service.

Mr. WOLL. Q. Those two shovels correspond in construction and appearance as the shovels that were issued to the groups?

A. Exactly.

Mr. WOLL. Mark this "Government's Exhibit 14."

(Thereupon the document was marked "Government's Exhibit 14" for identification.)

By Mr. WOLL:

Q. I will show you Government's Exhibit 14 for identification and ask you if you recognize this exhibit?

A. I do.

Q. And is that exhibit identical to one of the boxes that was furnished the two groups at the time they left Lorient, France?

A. It is, yes.

Mr. WOLL. Mark these "Government's Exhibits 15, 16, 17 and 18" for identification.

(Thereupon the documents were marked as requested, "Government's Exhibits 15, 16, 17 and 18" for identification.)

By Mr. WOLL:

Q. I will show you Government's Exhibits for identification 15, 16, 17 and 18 and ask you if you recognize these exhibits?

134 A. I do. May I see them, please?

Mr. WOLL. Yes.

The WITNESS. I do.

Q. And these exhibits are uniform caps, are they?

A. Yes.

Q. Are they identical with the caps that were worn by the two groups after they left the hotel in Lorient, France?

A. Yes, they are.

Q. Would you mind explaining, if you can, the insignia on these caps; I will show you exhibit 15 which is the same as exhibits 16, 17 and 18, and ask you to explain the insignia on Exhibit 15.

A. These caps in the German armed force are the same in color and in general appearance or cut, and the distinguishing mark is this yellow line which indicates that this particular cap is worn by members of the so-called marine-infantry or the equivalent in the United States with the marines.

Q. Did Herbert Haupt wear such a cap when he left Lorient, France?

A. He did.

Q. I asked you before if the members of the group were issued the money belts such as I showed to you and you stated
135 "yes." You mean by that to include all members of the group?

A. Yes.

Q. Or in just your group?

A. No, in all groups.

Q. Including Herbert Haupt?

A. Yes.

Q. I will show you Government's Exhibit 19 for identification and ask you if you recognize that exhibit?

A. It is a ring that has been worn by Herbert Haupt while in Germany and in France.

Q. I will show you this exhibit for identification number 20 and ask you if you saw that card or a card identical to that one in Germany?

A. I did.

Q. And what is that card?

A. This is a registration certificate for the Selective Service.

Q. And was that card identical with the cards that were distributed to the two groups?

A. Yes.

Q. Concerning which you have previously testified?

A. Yes.

Q. Do you know whether at the time of issuing these cards they were blank?

A. We received two.

136 Q. You received two cards?

A. Yes, we received one with the name in and one blank.

Q. Each individual of the group received two cards?

A. That is correct.

Q. I believe you stated before that there was issued to the groups a social security card?

A. Yes.

Q. I will show you—by the way, mark these documents "Government's Exhibits 19, 20, and 21" for identification.

(Thereupon the documents were marked as requested, "Government's Exhibits 19, 20, and 21" for identification.)

By Mr. WOLL:

Q. I will show you Government's Exhibit 21 for identification and ask you to examine that instrument and tell me if you know what that is?

A. This is a certificate, a social security card, which was issued to us by Lieutenant Kappe.

Q. Did you examine those social security cards, did you know they were issued?

A. I did.

Q. And will you tell us just what you did in examining those cards?

137 A. I was told by Lieutenant Kappe to take my social security card, that is the social security card containing my name and in order to do so I had to remove all the cards or look them over to find my name and my social security card, the social security card with my name happened to be on the bottom.

Q. Did you see any social security card there made out to Herbert Haupt?

A. I did.

Q. Is that the card or identical with the card you saw?

A. This appears to be the card I saw in Berlin.

Q. I believe you stated before that the two groups received a total of eight boxes?

A. Yes.

Q. That thereafter at Lorient, France, a second group left the hotel first and they had four boxes?

A. Yes.

Q. That your group left next and your group had four boxes?

A. Yes.

Q. Now, were the contents of the four boxes of the first group identical with the contents of the second group, I mean, the same type of material and equipment?

A. We were told they were identical.

Q. You were told that by whom?

138 A. By Lieutenant Kappe.

Q. Now, do you know what was in the four boxes that were taken by the group of which Herbert Haupt was a member?

A. Yes.

Q. Did you help back those boxes?

A. I helped pack one box.

Q. One box?

A. Yes, sir.

Q. What was in the box that you helped to pack?

A. Various equipment.

Q. Now, do you know how these four boxes were divided insofar as explosives were concerned, the equipment was concerned?

A. Yes.

Q. How many boxes contained explosives of the four boxes into each group—do you understand my question?

A. Yes, I understand your question. I am trying to recall it. I believe two.

Q. You believe two?

A. Yes, sir.

Q. The two remaining boxes contained what type of equipment?

A. They contained different kinds of mechanical
139 devices, of mechanical time devices, detonators, fuses; that is about all.

Q. Do you recall any particular type of time devices that was in one of these two boxes?

A. Yes.

Q. And what particular kind, do you recall?

A. I recall a time clock.

Q. A time clock?

A. Yes.

Mr. WOLL. Mark this document "Government Exhibit 22" for identification.

(Thereupon the document was marked as requested "Government's Exhibit 22" for identification.)

By Mr. WOLL:

Q. I will show you Government's Exhibit 22 for identification and ask you if you recognize that exhibit.

A. This appears to be one of the time clocks we were shown in Germany.

Q. Will you examine it, please, look at it, take it out of there?

A. Yes, this is exactly the same type of time clock we had over there.

Q. And by "over there" you mean in Germany?

A. Yes.

140 Q. Now in your earlier testimony you referred to a fountain pen and pencil set?

A. Yes, sir.

Q. Were those actually fountain pen and pencil sets?

A. They could be used as fountain pen and pencil sets.

Q. Did they have any other use?

A. Yes.

Mr. WARNHOLTZ. I shall object at this time, if the Court please, to cumulative evidence. If the inquiry is merely for the purpose of establishing enemy status of Herbert Haupt, I do not believe it is necessary to introduce all these exhibits which in effect may prejudice the jurors against the defendant. We have admitted his enemy status especially if this should continue now with these exhibits numbering 10 or 20 or 40 or 50 or 100 more exhibits——

Mr. FINN. Your Honor, if I may say this, because of counsel's statement, we are definitely going to limit the amount of this type of evidence that will go in. We would like to put in a few of these exhibits only. We are cutting down the amount of the exhibits in that regard.

Mr. WARNHOLTZ. All right.

Mr. FINN. We don't intend to put in all these exhibits, although I think they are admissible. We don't intend to put them all in.

141 The COURT. Very well.

By Mr. WOLL:

Q. I believe you stated that they had two purposes, one was as a fountain pen and pencil set and you were explaining the other purpose. Will you now continue on your explanation of the other purpose?

A. The second purpose for the fountain pen and pencil set was as a time device for incendiary and also for explosives.

Q. Do you know when they operated as a time device and incendiary?

A. Yes.

Q. Will you explain, that please?

A. The fountain pen contained a small container with sulphuric acid and separated by a mixture of chloride and sugar and by a small piece of cellophane and after the sulphuric acid is in the fountain pen and that fountain pen is placed in a certain position, then this sulphuric acid would eat through the cellophane and get in contact with the chloride and sugar mixture and immediately start into a flame.

Q. In connection with the fountain pen is it necessary to use any portion of the pencil?

A. It might be.

Q. You use the pencil to operate the fountain pen part as an incendiary?

142 A. It is possible to use part of the pencil attach—that part to the fountain pen for separate purposes.

Mr. WOLL. Mark this "Government's Exhibit 23" for identification.

(Thereupon the document was marked as requested, "Government's Exhibit 23" for identification.)

By Mr. WOLL:

Q. I will show you Government's Exhibit 23 for identification and ask you if you recognize this exhibit.

A. I do.

Q. And is this exhibit such a fountain pen and pencil set such as you have described?

A. Yes.

Q. Will you look at it carefully?

A. Yes.

Q. Is that exhibit such a type of fountain pen and pencil set you received, the two groups received in Germany?

A. Yes.

Mr. WOLL. Mark this "Government's Exhibit 24" for identification.

(Thereupon the document was marked as requested, "Government's Exhibit 24" for identification.)

143 By Mr. WOLL:

Q. I will show you Government's Exhibit 24 for identification, containing two objects, one cardboard paper and the other a metal article and ask you if you recognize, first the cardboard paper?

A. I do.

Q. And do you know whether or not that cardboard paper is the exact cardboard paper you saw in Germany?

A. This is the exact cardboard paper I saw and handled in Germany.

Q. And how do you recognize that as being the exact one?

A. By the writing.

Q. And what is written on that cardboard exhibit?

A. That cardboard exhibit is written in German. Siebzig Minuten.

Q. Do you know the English translation of that?

A. I think I do.

Q. Will you name that, please?

A. Seventy minutes running time.

Q. At the time you saw that cardboard in Germany, did it cover any article or articles?

A. Yes.

Q. What did that cardboard paper cover at that time?

A. It covered delay devices as this one here.

144 Q. Such as the metal part of that exhibit, now what is a delay device?

A. May I explain that in my own words?

Q. Yes.

A. It is impossible to bring explosives to detonation by standing there and lighting, so in order to protect the man who actually places the explosives he has to have the delay between the time he places the explosives and the time of detonation in order to get away and for several other reasons, so this time device is one of the delay devices, one of the different types of delay devices which we handled and were instructed in in Germany.

Q. Does the delay device form a part of that exhibit such as the type of delay device that was in the box that was covered by the papers, the cardboard cover you identified in that exhibit?

A. Yes.

Mr. WOLL. Mark this "Government's Exhibit 25" for identification.

(Thereupon the document was marked as requested, "Government's Exhibit 25" for identification.)

Q. I will show you Government's Exhibit 25 for identification and ask you if you know what this photograph is a reproduction of?

145

A. Yes.

Q. What?

A. This photograph portrays exactly one of the camouflaged lumps of coal which are shown us in Germany which had under a crust of plastic highly destructive TNT.

Mr. WOLL. Mark this "Government's Exhibit 26" for identification.

(Thereupon the document was marked as requested, "Government's Exhibit 26" for identification.)

Q. I will now show you Government's Exhibit 26 for identification which is a photograph and ask you if you recognize any one of the objects represented in this photograph as being an object which was taken by either one of these groups from the hotel in Lorient, France?

A. The photograph shows a number of wooden boxes, one of which I am able to identify for you exactly as the very same box we had with us at Lorient, France.

Q. And what is the means of that identification?

A. An "X."

Q. Is that mark on one of the boxes?

A. Yes.

Q. Does that photograph correctly and truly represent the mark that was on the particular box in Germany that you have reference to?

146

A. Yes.

The COURT. Are you going to have some further proof with respect to some of these items that have just gone before that simulated the lump of coal?

Mr. FINN. I will connect it up with another witness who took these photographs, your Honor, and they will speak themselves; as the witnesses dug them up in Florida they took photographs of them.

Mr. WOLL. I think this witness testified that they were given to the groups in Germany. I will ask that question.

Q. The various objects that you have described on the witness stand as being identical to the objects that you saw in Germany, and the objects which you subsequently had, and which I showed you photographs of or the article itself, were those objects such

that you received in Germany as were placed in these wooden boxes and were carried out of the hotel at Lorient, France; do you understand that question? It is rather involved?

A. I understand your question. They were not only such as I received of the same type, but some of them identified very
147 clearly as the very same objects we received and the very same objects I handled myself.

Q. Were there any other articles or objects or devices taken by the groups in these boxes when they left Lorient, France, other than you have described in this courtroom?

A. Yes.

Q. And all the articles that you have described in this courtroom were articles you yourself had in Germany, or were articles identical to the articles that were taken by the two groups from the hotel room in Germany and from the hotel room in Lorient, France?

A. That is correct.

Q. Now, did you at any time in Brandenburg or in Berlin, or in Lorient, France, participate in any conversation with Herbert Haupt in which the matter of his intention to carry out his mission or not to carry out his mission in America was discussed?

A. Yes.

Mr. WARNHOLTZ. I wish to object to that, your Honor on the grounds that it is hearsay evidence. That Herbert Haupt is dead and we canont rebut this. We have no means of showing that this was not now manufactured to fit into the picture and it
148 is absolutely impossible for us to—if this was only for the purpose of establishing the enemy status I believe sufficient of that has been introduced and without that we have to go to something that is not received at all, according to the rules of evidence.

The COURT. I am inclined to susfain the objection to that.

Mr. WOLL. I expect to show it by a conversation with Herbert Haupt himself.

Mr. WARNHOLTZ. I object to that.

Mr. WOLL. As to his purpose and intention, what he intended to do when he got here after carrying out his mission. Now, if you will note the indictment charges that he came here on this mission and intended to carry out his mission in this country at the time he came here. Now, I certainly think we are entitled to show that when he was here he had the intention.

The COURT. Step into the jury room, gentlemen.

Mr. WOLL. If the Court please we will withdraw the question for the time being.

The COURT. How does this shovel differ, Mr. Warnholtz?

The WITNESS. Your Honor, this shovel is longer, also the army shovel is flat. It has no bulge as this has here, if I may show you. On the other hand, this little point, the standard army
149 shovel has on the handle of the shovel no side bar. It is rounded off like this, and one more point is that the edges of the blade are not of this nature, because they are made to fit into a little container is little pocket, to be carried on the back and this would be too clumsy to be carried in a skirmish.

By Mr. WOLL:

Q. Now after you arrived in New York in June 1943, did you thereafter see Herbert Haupt?

A. I did.

Q. Where did you next see Herbert Haupt?

A. I saw Herbert Haupt next in Washington.

Q. In the city of Washington?

A. Yes, sir.

Q. In the United States?

A. Yes

Mr. WOLL. You may cross-examine.

Cross-examination by Mr. WARNHOLTZ:

Q. Mr. Burger, will you kindly state your age?

A. 37.

Q. 52 years?

The COURT. 37.

Mr. WARNHOLTZ. 37.

Q. When did you arrive in Chicago prior to your testi-
150 mony you are giving today? When did you come to Chicago, yesterday, the day before yesterday, a week ago, or when?

A. I came in the last week.

Q. Last week?

A. Yes.

Q. Approximately what day, do you know?

A. I think Friday.

Q. Upon arriving in Chicago, did you talk with any member of the District Attorney's office?

A. Yes, certainly.

Q. With whom did you talk?

A. I talked with Mr. Woll, the United States Attorney.

Q. The same day when you arrived?

A. No, no, no, not the same day.

Q. The next day or Saturday?

A. No, not on Saturday.

Q. On Sunday?

A. Yes. I think it was Sunday.

Q. Is that the only time you talked to him between Sunday and now, or have you talked to him since that time?
A. I can't understand your question. I am sorry.
Q. Mr. Burger, you talked on Sunday, as far as you remember?
A. Yes.
Q. With Mr. Woll?
A. I am quite sure on Sunday.
151 Q. Did you talk with him after that, on Monday or Tuesday?
A. Yes, I did.
Q. When?
A. I said, "Hello, Mr. Woll" on Tuesday, I think.
Q. On Tuesday?
A. Uh huh.
Q. Did you talk to him after Tuesday?
The WITNESS. I beg your pardon, you confuse me, what day is today?
Mr. WARNHOLTZ. Thursday is today.
The WITNESS. Thursday?
Mr. WARNKOLTZ. That is right.
The WITNESS. Yes; I saw Mr. Woll yesterday, and I had an opportunity also to say "Hello" to Mr. Woll.
Q. About how long did you talk to Mr. Woll on Sunday?
A. On Sunday, I don't recall.
Q. Well, will you say about two or three hours?
A. I wouldn't say two or three hours.
Q. Would you say less time or more?
A. I recall on Sunday it was a very short time.
Q. You saw him only once last Sunday?
A. Yes, sir.
Q. You didn't see him twice on that day?
152 A. No; I didn't see Mr. Woll twice.
Q. Just once on Sunday?
A. Just once on Sunday.
Q. Did you see any other member of the District Attorney's office on Sunday or any other day during this week?
A. Yes, I did.
Q. Who did you talk to besides Mr. Woll, this gentleman here?
A. Yes, exactly.
Q. Which one?
A. I said "Hello" to Mr. Finn.
Q. Yes.
A. I also said "Hello" to Mr. Hurley, I believe.
Q. Did you talk to either of them for any length of time?
A. No, no; of course, that is relative, but you understand, Mr. Warnholtz, the length of time, you say five minutes——

Q. Did you talk a half hour there to each of them?
A. To whom?
Q. To Mr. Finn or to Mr. Hurley?
A. No; not without interruption, I mean me going out or things of that kind. I happened to say to Mr. Finn, to see Mr.
153 Finn on that day a few times, you see.
Q. Did you discuss this case with Mr. Woll or Mr. Finn or Mr. Hurley on Sunday?
A. Yes, I did.
Q. On Monday?
A. I don't recall to having discussed this case on Monday.
Q. Did you talk to any of those gentlemen last night after four o'clock?
A. No.
Q. Last night?
A. You mean yesterday afternoon.
Q. Four o'clock, that is right.
A. I think I did.
Q. Do you know or do you only think so?
A. I was told that I was—I am not required to go on the stand.
Q. Is that all you discussed?
A. Naturally had to do directly with this case.
Q. Yes.
A. Yes, exactly.
Q. Is that all that you discussed with them, or any talk?
A. That is about all.
Q. Last night?
A. Yes.
Q. Did you discuss at all the facts of the case with them last night?
154 A. Did I discuss what?
Q. The facts of the case, any talk with them about this case last night?
A. Last night?
Q. Yes, or yesterday afternoon, whichever way you want it, after four o'clock?
A. Mr. Woll don't speak to me about the facts of this case.
Q. What did he speak to you about?
A. He said my appearance as a witness is not required—would be—
Q. Mr. Finn talked to you about four o'clock?
A. If you would mind not interrupting me, please, Mr. Warnholtz. If you want me to finish my sentence. Mr. Woll was informing me that I would be required to be on the stand today.
Q. And that is all he said?

A. That is approximately all.
Q. Mr. Finn did?
A. You mean Mr. Finn?
Q. Yes, the second gentleman here.
A. Yes, he also spoke to me.
Q. What did he say?
A. He told me the same thing.
Q. And Mr. Hurley, what did he say to you?
A. I didn't see Mr. Hurley yesterday?

155 Q. You have testified in this case before, haven't you, Mr. Burger, that is about one year and a half ago in the case of the United States of America against Hans Max Haupt and several other defendants involving the same statement of facts. You remember that, do you? Certainly. How often have you told your entire story or similar story to various juries all over the country——

Mr. WOLL. I object, if your Honor please.

The COURT. Well, to the form—I will sustain the objection to the form.

By Mr. WARNHOLTZ:

Q. Have you testified concerning these facts or similar facts of your coming over here and the other seven men coming to the United States in any other case?
A. I never testified to similar facts, Mr. Warnholtz.
Q. Did you testify to the same facts as you testified here today?
A. I testified to the truth. I testified to the fact which came out today exactly here to the best of my recollection.
Q. How many times did you so testify?
A. I don't recall.
Q. Well, did you testify against a man by the name

156 of Cramer in New York?
A. I did.
Q. Did you testify against a man by the name of Leiner in New York?
A. I did.
Q. And against a man by the name of Stevens in Detroit?
A. I believe I did.
Q. Or Steffans?
A. Oh, no.
Q. Do you remember anybody else against whom you testified?
A. I don't know. I don't remember anyone by the name of Steffans or anything.
Q. Do you remember anybody else outside of Cramer and Leiner?
A. Certainly. I recall having seen you, for instance, two years ago.

Q. In other case. Did you testify outside of Cramer and Leiner and Haupt case here in Chicago?

A. I don't remember that.

Q. Do you know how many times you have testified in court regarding this entire matter?

A. I don't recall that.

Q. Would you say more than ten times?

A. I would say considerably less.

157 Q. More than five times?

A. I still would say less.

Q. Did you at any of these trials meet any of the other seven men who came over here with you?

A. No, I did not.

Q. As far as you know you only testified concerning the facts, right, Mr. Burger?

A. That is correct.

Q. Mr. Burger, did you ever see the defendant, Mr. Haupt, Hans Haupt, the man sitting over there, did you ever see him prior to the day, prior to the time you testified the last time?

A. I don't think I did.

Q. Did you ever see his wife Erna Haupt prior to the last time you testified?

A. Yes, I did.

Q. Where did you see her first?

A. I saw her in Washington.

Q. At the military trial of the eight men who came over here?

A. Yes, sir.

Q. Prior to that date did you ever see her?

A. I might have.

Q. That you know of?

A. No.

Q. Regarding these instructions which you claim
158 Herbert Haupt received in Germany and which you stated today consisted of the following:

First, that he should use his own name in the same neighborhood where he was known and a different name when he was away from his home grounds?

Second, that he should immediately proceed, upon landing to Chicago?

Third, that he should procure an automobile.

Fourth, that he was to procure information in detail about the optical industry and especially regarding the Norden Bomb Sight?

Next he should register with the army, and next that he should contact a politically trustworthy person with whom to deposit certain money. With reference to these statements I will ask

you if you now—did you make the same statements when you first testified in this case?

A. I don't recall what I testified to at the first trial.

Q. You do not remember that?

A. Correct.

Q. But you do remember further back when these statements were first—when these orders were first given to Herbert Haupt?

A. A German soldier never forgets an order Mr. Warnholtz.

159 Q. But he will forget his testimony, is that the answer?

A. I don't know what you mean by testimony.

Q. You gave testimony in this case about one year and a half ago?

A. Correct.

Q. That you forgot?

A. I didn't say that I forgot the testimony, but I forget if I mentioned these various facts in that sequence one other time in that trial.

Q. Mr. Burger, did you state that Haupt had instructions to buy an automobile which was to be used for the purpose of conveying dynamite and this equipment?

A. No dynamite; I beg your pardon.

Q. I beg your pardon?

A. No dynamite.

Q. Well, this various equipment, whatever it was, that was your testimony today; is that right?

A. That was my testimony.

Q. Do you remember, Mr. Burger, that you stated today Herbert Haupt was not to come to Chicago to see his parents. You do not remember having stated that today?

A. Today?

Q. Yes.

A. No.

160 Q. Do you remember that you stated that very distinctly about two years or two years and a half ago when you first testified in this trial?

A. Yes, but not in that form.

Q. Sir?

A. Not in that form.

Q. What did you say at that time?

A. I stated at that time it might be. I even stated too, I don't recall exactly, but I distinctly recall it that I testified last time that Herbert Haupt had the order not to approach his parents. He had the order, though, to come to Chicago. I believe, I am afraid Mr. Warnholtz you misrepresented that just now.

Q. Let me ask this, Mr. Burger, why did you forget today to

state that particular instruction that he should not approach his parents?

A. I do not believe that any one, any one, any human being could give a reason for forgetting it.

Q. You forgot, you stated soldiers never forget orders, is that what you stated?

A. Mr. Warnholtz, if you might not interrupt me, he either forgets or he doesn't forget.

Q. Turning and reading from the official record of the last case, I will ask you if this refreshes your memory of what
161 you stated at that time: You were asked these questions while you were on the witness stand by Mr. Woll:

Q. Did your instructions take in anything other than the manufacture of explosives and incendiaries and detonators, timing devices and fuses?

A. Yes, sir.

Q. In what other manner were you instructed?

A. We were instructed in the preparation of our identity over here.

Q. What were the instructions? Do you know the instructions that were given to Herbert Haupt in that regard?

A. I do.

Q. Who gave the instructions?

A. Kappe.

Q. Who was Kappe?

A Lieutenant Kappe was in charge of the assignments.

Q. What were the instructions he gave?

A. The instructions given to Herbert Haupt were first, not to visit his parents in Chicago after his arrival over here, second, to get employment in the Optical Industry, third, to regis-
162 ter as soon as possible for the army, relative to registering, as soon as possible, do you recall the particular instructions that were give or in substance what was said?

A. He received the instructions to register immediately after his arrival.

Q. Was the name of that Optical Company mentioned in the instructions?

A. The Simpson Optical Company was mentioned.

Q. What Company? Simpson Optical Company. Was anything said there relative to how he was to get around in America?

A. Haupt also had the assignment to furnish a car for his group.

Q. Were there any instructions given relative to what should be said in the event of being questioned as to your whereabouts or as to Herbert Haupt's whereabouts?

A. He had instructions to state that during his absence he stayed in Mexico.

Q. Who were present when these instructions were given to Herbert Haupt?

A. I was.

Q. Where were these instructions given?

A. At the School.

Now, do these refresh your recollection, Mr. Burger, or maybe I better read and give you the questions and answers on cross examination?

Being your testimony at the same trial at that time I asked you as follows: "You stated, Mr. Burger, that Herbert
163 Haupt after arriving in America was not to visit his parents in Chicago. He was to get employment with an optical concern. That he was to register in the army, that is for Selective Service immediately after arriving here; that the name of the company with which he was to associate himself was the Simpson Optical Company, that he was to purchase an automobile and furnish that to his particular group, that he was to say that he had been in Mexico during all of the time that he had been absent from the United States. You made the following statement; that Herbert Haupt received instructions from Lieutenant Walter Kappe, that upon arrival in America he was not to visit his parents; answer: "that is correct."

Mr. WARNHOLTZ. Does that refresh your recollection now very distinctly?

A. I am very grateful to you, Mr. Warnholtz——

Mr. WOLL. I object to the question. He said he recollected—he did testify to that on the first trial. This is not impeachment in any sense of the word.

The COURT. Well, I don't think it is. The question was, does it refresh your recollection. He may answer.

164 By Mr. WARNHOLTZ:

Q. Mr. Burger, do you remember when you first heard the name, "Simpson Optical Company" and where you first heard it?

A. You mean in the United States or in Germany?

Q. Anywhere?

A. I heard that first in Brandenburg.

Q. In Brandenburg?

A. Yes, sir.

Q. And what was the occasion?

The COURT. I didn't get that.

By Mr. WARNHOLTZ:

Q. And what was the occasion?

A. The occasion was the very first time I heard the name in a

personal conversation between Herbert Haupt and myself, when he told me he had worked there before. If I am not mistaken, that is the best recollection.

Q. Let me ask you, Mr. Burger, about this exhibit number 9, this zipper bag. May I have that bag, please—Where did you first see this?

A. In Germany.

Q. Do you know where it came from?

A. I think I do.

Q. Where do you think it came from?

A. I was told that this particular zipper bag was made in Germany.

165 Q. Who told you that?

A. Edward Kerling and Lieutenant Kappe.

Q. And what else did they tell you about some party of some other zipper bags, American-made zipper bags, or what was that story?

A. I don't know what story you are referring to.

Q. What did you tell us on the stand before that this was copied from some American bag, or what? I was sitting a little far away, and I couldn't quite get it.

A. You mean, in other words, you want me to repeat my testimony of this forenoon.

Q. On that point, yes.

A. As to which point, Mr. Warnholtz?

Q. As to the point of the zipper bag when they first used it, it was a copy of some other bags or something?

A. Yes; that is right.

Q. Is that what you stated before, if you remember it?

A. I stated that we had in our possession two American-made zipper bags and that little zipper bag was manufactured, made according to corresponding to the dimensions and to the general appearance or style or whatever you call it of the other zipper bag.

166 Q. What became of those two American zipper bags?

A. I don't know.

Q. When you say, "We had them in our possession," who is we?

A. Our groups.

Q. Who had charge of them?

A. Lieutenant Kappe.

Q. And he showed them to you?

A. Certainly he showed them to me. He showed——

Q. What was it he already showed those to you?

Mr. FINN. Keep your voice up, please, it is rather difficult to hear you.

The WITNESS. I am sorry. I believe it is not correct, Mr. Warnholtz.

Mr. WARNHOLTZ. What is not correct?

The WITNESS. Let me finish, please?

Mr. WARNHOLTZ. Certainly.

A. I do not believe it is correct to refer to Lieutenant Kappe showing this zipper bag to me or did he have a conversation or did you do this or that. I would like to state right here that we were never alone: we were one compact unit. Trained together. School together. Lived together, so anything what occurred occurred in the presence of all of us. That is that point.

167 Q. And he showed them to all of you, I mean the bags?

A. He did not come in the room. We were there together. If he showed something to us we were all there, that was the case.

Q. Didn't you state a moment ago that the two groups had those two bags, those American bags?

A. Execatly.

Q. From whom did you get them?

A. I don't know where they originally came from, but I stated that Lieutenant Kappe at the beginning of our course asked each one of us if we had or everyone who had certain object originally, genuine American objects of any kind of apparel or equipment, like, for instance clothes, underwear, shoes, hats and among them were also zipper bags, because, of course, it is obvious that he could not let under any circumstances on the American shore any of us carry German suit cases.

Q. Now, Mr. Burger, do you know who contributed these two bags?

A. I don't recall who contributed that particular bag, or the other bag.

Q. The two zipper bags, American bags?

A. I know the two zipper bags were contributed by some members of our unit.

168 Q. Do you know if those identical bags were later used again by the two groups, the identical bags, which were first contributed?

A. I don't know what you mean.

Q. Well, two bags were contributed by members of the group?

A. Right.

Q. Were those same bags later on used again for use when you all left in carrying, putting money in it and taking it along?

A. No.

Q. The bags which were used were newly made bags in Germany?

A. No. You asked me where these two bags, these two original American bags were used to carry money in and I said, yes, one of them was used.

Q. One was?

A. That is right.

Q. Is this the one?

A. No, this is not the one, I stated before this is not one of the original genuine American zipper bags. This is one bag that was made, manufactured in Germany, according to the dimensions or corresponding to the size and so on and so on with the two original zipper bags.

Q. How do you know that this is the one that was
169 made in Germany?

A. Because I was told that this is the particular bag and was made over there. As a matter of fact, Lieutenant Kappe had great delight and joy in describing and showing us how perfectly the imitation was. That is the reason why I happened to know that this particular bag with the two leather straps was manufactured over there.

Q. Did you tell the same story to the FBI when they first apprehended you, Mr. Burger, about this zipper bag?

A. I don't recall if the FBI needed my information.

Q. When you testified the first time in this case about one year and a half ago, you did not mention the Norden Bombsight; do you remember whether or not you did; when did that come to your mind again?

A. I don't recall that, Mr. Warnholtz.

Q. Now, about this money which the two groups got in a belt, a money belt, did you see the money that was put into each belt?

The WITNESS. May I ask you to speak louder, Mr. Warnholtz.

Mr. WARNHOLTZ. Louder?

The WITNESS. Yes, please.

Q. Did you see the money that was put into each belt?
179 A. When it was put in?

Q. Yes.

A. Yes. One second please, one second. Let me correct myself. I saw the money which was put into the money belts of Group number 2.

Q. When did you see that money first, before it was put into the belts or after it was taken out?

A. After it was taken out.

Q. When you saw the belts first they were closed and the money was——

A. Pardon me; pardon me?

Q. When you saw the belts first they were closed and the money was inside?

A. No; when I first saw the belts they were empty.

Q. They were empty?

A. Yes, sir.

Q. And after you saw the belts again, what condition were they in?

A. They were closed, and they were filled with money.

Q. And where was that?

A. In Lorient.

Q. How do you know there was money inside?

A. Because we took it out.

Q. Who is "We"?

171 A. All eight of us.

Q. Had you already received your own individual money belt?

A. No.

Q. When did you get that?

A. On board the submarine.

Q. You had taken out the money, the first group had taken it out of the belts?

A. Oh, we didn't give it to the first group, but group number 2.

Q. Well, group number 2?

A. Yes.

Q. You had taken that out?

A. Yes, I was asked to take that out.

Q. By whom were you asked?

A. You see, we all took it out.

Q. By whom were you asked?

A. By one of the boys.

Q. Did you take it out of the belts?

A. Oh, no, no, no.

Q. Did each one get a belt?

A. Yes.

Q. Who had the right of disposition over those belts?

A. The owner of that belt.

Q. Only one of the boys told you to take it out of all of the belts?

172 A. No, no.

Q. Each one asked you to help him take it out?

A. No.

Q. Did you ever see the money that was put into the zipper bag?

A. No.

Q. The answer is "No," correct?

A. That is right.

Q. You stated, Mr. Burger, that this particular zipper bag, Government's Exhibit A for identification was given to Herbert Haupt?

A. Yes.

Q. When and where?

A. In Lorient, France.
Q. And where, in what place in Lorient?
A. At the hotel.
Q. At the hotel?
A. Yes, sir.
Q. Who gave it to him?
A. Lieutenant Kappe.
Q. And what did Herbert Haupt do with it after he got it?
A. I don't know what he did with it.
Q. Who carried it down to the car, or the automobile, or whatever it was?
A. I don't recall who carried it down.
173 Q. Did you see Herbert Haupt carry it down?
A. Mr. Warnholtz, I just made the statement——
Q. Answer the question, please.
A. That is what I am trying to. I am trying to. I just made the statement I don't recall who carried it down, so when you asked me did Herbert Haupt carry it down, I don't know, because I don't recall which one, which individual took this particular bag and carried it down the stairs.
Q. You do not know?
A. I don't recall, no.
Q. When you state, Mr. Burger, that certain articles are identical with those you received in Germany, please state what you mean in the use of the word "identical"?
A. When I say "identical" I mean the very same. I mean of such an extreme likeness. Of such an extreme likeness that it corresponds to every regard to the object in question.
Q. I now refer you to Exhibit number 25 for identification, will you say you have seen this exact lump of coal which appears to be a lump of coal, this exact one?
A. Would you mind showing that to me, please?
174 Mr. Warnholtz. Yes; I would be glad, because you saw it before, it is the same one.
A. Thank you, sir. Now, what was your question?
Q. Will you state you saw this exact lump of coal that is a photograph here of it?
A. I did not state that.
Q. Would you say it is identical with any lumps of coal that you had in your possession, you saw over there?
A. I would state that this picture portrays exactly the lump of coal shown to us in Germany, because it corresponds exactly with that particular lump of coal shown us in size; in general appearance, in color, in the boring of one end of the approximate size of a detonator, and that is all.
Q. And all of that time you covered by the term "identical"

is that correct, is that the understanding, what you mean by that term?

A. Yes.

Q. That is identical, then?

A. I didn't say that is identical.

Q. Well, the record will show what you said.

A. It should.

Q. Referring to Exhibit 24 for identification, this cardboard which has writing on it translated it means seventy minutes;
175 timing seventy minutes, now you state you had this identical, this here cardboard?

A. That is what I stated.

Q. This very one, you don't mean identical now, you mean you had in your possession exactly this particular article that I now hold in my hand?

A. Yes.

Q. Are you familiar with the handwriting of the man who wrote this on there? Did you write that?

A. I did not write that.

Q. Do you know who wrote it on there?

A. No.

Q. If the same man that had written this identical text, on several cardboards, there being no difference in the cardboards, would you know which one you had?

A. I saw this handwriting once in my life. This particular handwriting is so out of order of all ordinary handwriting that any one who sees this particular handwriting once would remember that for all times for the simple reason that the two words are written in two different styles of writing. One is written in Roman printed letters and the other is written in German script.

Q. That is your only method of identification, is that right?

A. That is my method of identification.

176 Q. For stating this was exactly the same article you had?

A. Correct.

Q. And you made the same statement and picked out this particular article, that was in New York in the testimony against Cramer, do you recall that?

A. I don't recall that.

Q. Mr. Burger, have you ever been convicted of a crime in the United States?

A. Yes.

Q. When and where?

A. In 1942 for the attempt of espionage and sabotage.

Q. That was before the military tribunal?

A. Correct.

Q. What was the sentence of the court?

A. Death.

Q. What happened after that with reference to that sentence?

A. It was commuted to life.

Q. Conditionally or absolutely?

A. What do you mean by conditionally?

Q. Subject to things you may do in the future, something that may happen in the future?

A. Mr. Warholtz, I would like to tell you some-
177 thing. I know that I am under oath——

Mr. WARNHOLTZ. Answer my question, please.

A. That is my way of answering the question. I know I am here under oath. I know what that means. It means that God is my witness.

MR. WARNHOLTZ. I object to his making a speech your Honor. I asked him to answer the question and he should be so instructed, I believe.

The COURT. I think that under the circumstances he may answer the question.

A. I think this, your Honor. I said I am fully conscious of the meaning to be under oath. That means I know God is my witness. I did not receive, at any time, any condition, offers or promises by the United States Government. I did not offer anything on my side and I did not consider my personal safety before the service of duty to my country. I don't believe that I acted a single time against my honor as a German soldier, and what more, a storm trooper. This is not a statement to defend myself, Mr. Warnholtz, but this is correct, once and for all.

By Mr. WARNHOLTZ:

Q. Well, now, Mr. Burger, what happened to Mr. Dasch, what was his sentence, also sentenced to death?

A. Yes; I believe so.

178 Q. Also commuted to life imprisonment?

A. I do not know.

Q. Do you know whether he is living or dead today?

A. I do not.

Q. When did you last see Herbert Haupt?

A. I saw Herbert Haupt last, oh, I don't remember the date, after the trial was over.

Q. Where?

A. In Washington.

Q. Where did you see him last, in Washington or in some jail or courthouse or where?

A. I think I saw him the last time, I don't recall exactly. I either saw him in the courthouse, when we shook hands, when we said goodbye, or I saw him in his cell.

Q. When you saw Herbert he was in custody or was it at the military trial when you saw Herbert Haupt in Washington?

A. Certainly.

Q. He was in custody?

A. Absolutely.

Q. The last time you saw Herbert Haupt was the last time you saw your companion Thiel?

A. That is correct.

Q. And your companion Neubauer.

A. All my companions.

Q. And your companion Kerling?

A. Yes.

179 Q. And Quirin?

A. Yes.

Q. And who is left?

A. I think Dasch is left.

Q. And lastly you are short one. Who was that?

A. Dasch.

Q. He was the only one that was left?

A. Yes.

Q. You never saw or heard Dasch testify in any court, did you?

A. No; I did not.

Q. Nor have you seen him elsewhere, have you?

A. Elsewhere, where?

Q. After the trial? After you last saw Thiel and Neubauer and the rest of them, did you see him again later on?

A. Dasch?

Q. Yes.

A. Yes, I did.

Q When did you see him last?

A. Last?

Q. Yes.

A. I don't recall when I saw him last.

Q. About how long ago?

A. I don't recall that.

Q. Where did you see him last?

A. I don't recall that.

Q. During the last trial, Mr. Burger, on cross

180 examination I asked you this question:

"Q. When did you first learn the name of the Simpson Optical Company in the United States; who mentioned it first to you?"

Mr. Warnholtz. And your answer was:

"A. It was mentioned at the trial?

"Q. In Washington; that is correct?"

The Witness. That is correct.

Q. Is that the first time you ever heard the name?

A. In the United States, in Washington.

Q. You never mentioned that to any of the agents of the Federal Bureau of Investigation when you were first apprehended by them?

A. I don't understand your question.

Q. Before you appeared at the trial, were you not asked questions by a group of the Federal Bureau of Investigation?

A. When I was apprehended by the Federal Bureau of Investigation, Mr. Warnholtz, as the last one of my group, the FBI was in the possession of all the information I testified to here. See?

Q. They didn't ask you anything?

A. How to testify?

Q. They didn't ask you anything at that time?

A. Certainly they asked me questions.

181 Q. Did they ask you about the Simpson Optical Company?

A. I don't recall, but I would like to state this, Mr. Warnholtz.

Q. You have answered.

A. I have not testified to any military secrets of the German Wehrmacht, not known to the FBI.

Q. Well, was it a military secret as to whether or not you knew anything about the Simpson Optical Company, on which your memory now is so weak?

A. I told you I don't recall being questioned about it.

The COURT. Take a short recess, ladies and gentlemen.

(Whereupon a recess was had.)

182 By Mr. WARNHOLTZ:

Q. Mr. Burger, do you know why you were not executed together with your companions?

A. I surmise. I was not informed why I was not executed.

Q. What do your surmise?

A. I surmise I escaped the death penalty because I am a soldier and not an agent for hire. I did not come to this country like, for instance, Herbert Haupt did, for money, but I came over here in the line of my duty.

I also did not inform anyone in this country of my mission. I did not brag about trying to be a German Lieutenant. I did not tell stories about flower girls saying goodbye to me when I entered the submarine as Herbert Haupt did.

I did not cache any money with anyone. I registered in hotels under my own true name, and there are several other reasons I could add. That is my surmise, Mr. Warnholtz.

Q. Mr. Burger, did you talk with anyone—I am not now refer-

ring to members of the office of the United States District Attorney. Did you talk with anybody about this case after four o'clock yesterday afternoon?

A. I do not think I did.

183 Q. Well, will you state you do not know that you did not?

A. Pardon me?

Q. Would you state you know you did not?

A. No; I cannot state that I know I did not.

Q. You are not sure whether or not you talked to anybody?

A. I said I do not recall if I did. That means my memory at the present time does not tell me if I did or if I did not.

Q. May you have had a lapse of memory between four o'clock yesterday afternon and now?

A. The question is not lapse of memory. The question is that I am under oath. I want to give the correct, the truthful answer. What I am not sure of I say so.

Q. But you are not sure whether or not you talked with anybody about this case since four o'clock yesterday afternoon?

A. I don't recall if I said anything, if anybody spoke to me after four or before four o'clock or in the evening or at any other time.

Q. Well, at any time during the afternoon?

A. Probably I did, perhaps. I do not know. I do not recall.

184 Q. Tell me, Mr. Burger, or try, please: Were you asked before you testified in any of these cases that we have mentioned, whether or not you would be willing to testify?

A. Mr. Warnholtz, I had the experience with you two years ago, to remind you that I am a German soldier.

Q. Will you answer the question yes or no?

Mr. Warnholz. I want an answer to this, your Honor.

The Court. What is the question? Read the question:

(Question read as follows: "Were you asked before you testified in any of these cases that we have menfioned, whether or not you would be willing to testify?")

The Court. You may answer yes or no, and if that does not tell the whole truth you may add to that answer whatever is necessary.

A. I was not questioned or asked at any time by any official or by any other person, if I would be willing to testify at any place in the United States. Your Honor, may I just add something to this statement?

The Court. Yes.

The Witness. To this answer?

185 The Court. Yes.

A. In being called to testify the choice is not up to me, but even if the choice would be up to me, I would see it as my duty to testify and thereby bring all these facts to the knowledge of my country.

This is the only means for me to communicate to my country what has happened, Mr. Warnholtz.

By Mr. WARNHOLTZ:

Q. In order to communicate that knowledge to your country, I presume you mean Germany, you think you have to so testify to the same things over the same period for two or three, or five or six times?

A. You presume right when you presume it is Germany.

Mr. WARNHOLTZ. That is all.

Redirect examination by Mr. WOLL:

Q. Mr. Burger, will you please explain what happened in regard to the opening of the money belts? Will you just give us in your own language what happened on that, at that time, at Lorient?

A. You mean in Lorient?

Q. At Lorient?

A. Shortly before group number 2 left we all were
186 assembled into one room and at that time group number 2 received their money belts.

In addition to us receiving money belts group number 2 received, as stated, $400 each, in smaller denominations.

Now, Herbert Haupt happened to be—Herbert Haupt looked at these different bills, these smaller bills carefully through and found that some of these bills were so-called gold certificate or yellow backs, and they were put aside.

After this was done one of the members had the idea that there might be in the money belts also a number of gold certificates, and we all decided to open up the money belts right then and there and take out all the money which consisted of fifty dollar bills, packed in these different compartments of the money belts, and checked them carefully, if there were any more gold certificates, which we did.

And that was the reason, or the occasion when I handled one pack or several packs of this particular money which was taken out of these money belts. That is my explanation of this incident.

Q. At that time did Herbert Haupt say why he excluded these gold certificates?

A. Yes, he did.

187 Q. What did he say?

A. He informed us that they were not valid over here.

Q. Mr. Warnholtz asked you some question and he used the

word dynamite and you said not dynamite?

A. We did not have any dynamite in our possession.

Q. What did you have?

A. We had TNT.

Mr. WOLL. At this time, if your Honor please——

Mr. WARNHOLTZ. I would like to ask a question with reference to that.

Mr. WOLL. I am sorry. Very well.

Recross-examination by Mr. WARNHOLTZ:

Q. Did Lieutenant Kappe apologize and tell you that the German government did not know anything about the validity of gold certificates, and the error about putting them into the money belt?

A. Mr. Warnholtz, you especially should know that a German Lieutenant does not need to apologize to any of his men.

Q. Did he make any remarks about it?

A. There were no remarks.

Q. You did not ask him whether or not the German
188 government did not know more than that, did not know these gold certificates would lead to discovery?

A. A German soldier never asks questions of that kind from a superior officer.

Q. What was your rank?

A. Do you mean in the army?

Q. Yes.

A. Or in the party?

Q. Army?

A. Do you mean in the army or in the party?

Q. In the army?

A. A Private.

Mr. WARNHOLTZ. That is all.

Mr. WOLL. Is that all, Mr. Warnholtz?

Mr. WARNHOLTZ. Yes.

Mr. WOLL. I would like at this time, if your Honor please, to offer in evidence Government Exhibits 1 to 8, inclusive, which consist of pictures of Lieutenant Kappe and of the seven persons who received training at the Brandenburg School, with the witness, Mr. Berger.

The COURT. Any objection?

Mr. WARNHOLTZ. No objection, restricted to the status of Herbert Haupt.

Mr. WOLL. It is for the purpose of identifying the persons there. I think we have it in, as to the testimony.

189 The COURT. Any objection?

Mr. WARNHOLTZ. I understand it is for the purpose of identifying especially Herbert Haupt, for that purpose?

Mr. WOLL. It is for the purpose of establishing the identity of the persons who were with Mr. Burger at this school and the picture of the man who was in charge of the school. That is what it is.

Mr. WARNHOLTZ. In connection with that?

Mr. WOLL. In connection with that.

The COURT. They may be received.

(The documents so offered and received in evidence marked "Government's Exhibits 1 to 8," both inclusive, are in the following form, to wit:)

190 Mr. WOLL. If your Honor please, I would also like to offer in evidence at this time Government's Exhibit 11 which you will recall this witness stated is the exact shovel that he had himself.

The COURT. It may be received.

(The object so offered and received in evidence marked "Government's Exhibit 11" is made a part of this record by reference.)

191 Mr. WOLL. I would like also to offer in evidence as Government's Exhibit 10 the money belt which this witness stated was his money belt and which has his initials on it.

The COURT. It may be received.

(The object so offered and received in evidence marked "Government's Exhibit 10" is made a part of this record by reference.)

192 Mr. WOLL. I believe that will be all, if your Honor please.

The COURT. Very well. You may step down.

EARL J. CONNELLEY, called as a witness on behalf of the Government, having been first duly sworn testified as follows:

Direct examination by Mr. FINN:

Q. Will you state your name, please?

A. Earl J. Connelley.

Q. What is your occupation?

A. Assistant Director, Federal Bureau of Investigation.

Q. How long have you been Assistant Director of the Federal Bureau of Investigation?

A. About five years, about five or six years.

Q. How long have you been connected with the Federal Bureau of Investigation?

A. Twenty-four years and four months.

Q. As Assistant Director did you have charge of an investigation into the saboteur situation that arose in 1942?

A. I did.

193 Q. Calling your attention to on or about the 25th day of

June 1942, did you make a trip to any State in connection with that investigation?

A. Yes.

Q. Where did you go?

A. To Jacksonville, Florida.

Q. Will you state what you did at Jacksonville, Florida?

A. On June 25 I met at the station there various agents from the New York office, together with Edward D. Kerling.

Q. I will show you Government's Exhibit 5 for identification and ask you to tell us what that is?

A. This is a picture of Edward D. Kerling.

Q. Is that the man you met in company with the agents that day?

A. That is right.

Q. Who was in this party besides yourself and Mr. Kerling?

A. Special Agents G. R. McSwain, John A. Holzman, M. R. Griffin and D. M. Brightman, who had brought Kerling to Jacksonville, Florida, and I met them at the station with other agents including Special Agent in charge R. J. Danner, and from the Miami office Special Agent Leon O. Prior and Special Agent G. F. Lindsey.

194 Q. Were you joined also by Mr. Parsons?

A. Mr. Parsons was also there.

Q. What is his first name?

A. D. J. Parsons.

Q. What is his occupation with the Federal Bureau of Investigation?

A. He is a laboratory expert on explosions.

Q. After this party had gathered, what did you do?

A. We proceeded in an automobile south from Jacksonville to Jacksonville beach and then to Ponte Vedra, and I believe it is four miles or 4.1 south of Ponte Vedra.

Q. Where is Ponte Vedra located with reference to Jacksonville?

A. South of Jacksonville on highway 140, which is around the coast line, the coast line of Florida, the East Coast line.

Q. After you gone to Ponte Vedra, what did you do?

A. John A. Holzman, G. R. McSwain, Edward D. Kerling and myself proceeded out on to the beach, just about three miles down the beach south, then returned north, around the highway, to approximately the same point that we had started out from.

195 Then we proceeded along on the beach to the top of a sand dune, along the beach until we arrived at a place around 4.3 miles south of Ponte Vedra, on the beach.

Q. What happened there?

A. At this place Edward D. Kerling pointed to the ground on the beach there, or on the sand dune.

Q. What happened, just tell us.

A. Thereafter Special Agent D. J. Parsons dug into the sand and uncovered four boxes which were taken out of the excavated place at that time.

Q. As the digging operations took place, did any one photograph the operation at different stages and the different objects which might have been found in the sand there?

A. The Bureau photographer, J. R. Dunlop photographed the place before we started digging; and thereafter as the boxes were uncovered he made two other shots, one when the boxes first were exposed, and thereafter when all boxes had been exposed in the hole; and thereafter when the boxes had been removed from the hole, on the side of the sand dune.

Mr. FINN. I will ask that these be marked for identification "Government's Exhibits 27 to 34," both inclusive.

196 (The documents produced by counsel were marked "Government's Exhibits 27 to 34," both numbers inclusive.)

Q. Mr. Connelley, after these boxes had been uncovered, just what was done with them?

A. After they had been uncovered or taken out of the hole I marked each of the boxes for identification.

Q. Then what was done?

A. Thereafter they were taken to an automobile on highway 140 south, in charge of Donald J. Parsons and J. R. Dunlop who proceeded in the automobile with the boxes to Jacksonville.

Q. Did you proceed with them to Jacksonville or not?

A. No; I did not.

Q. I will show you Government's Exhibits 27, 28 and 28 for identification and ask you if those correctly portray the digging operations which you have described in the various stages?

A. They do.

Mr. WARNHOLTZ. What was that first number?

Mr. BERTRAM. What was the first number, pardon me?

Mr. FINN. These are Government's Exhibits 27, 28, and 29 for identification. I also have Government's Exhibit 34 for identification.

197 Q. I ask you if that portrays correctly the place after the boxes had been taken out of the ground?

A. That is right.

Q. What did you do thereafter, Mr. Connelley?

A. Thereafter at 5:00 o'clock I met with D. J. Parsons and J. R. Dunlop in a garage at 2149 St. Johns Avenue, Jacksonville, Florida, where the boxes were then located.

A. At that time were the boxes open or were they still closed?

A. The boxes were still closed.

Q. And after that, you saw them there, did you, in the garage?

A. That is right.

Q. While you were there were the boxes opened?

A. These boxes were opened at that time in my presence.

Q. Were they the same boxes which you had seen at the time, out of the sand?

A. Those were the same boxes.

Q. Still containing the identification marks?

A. That is right.

Q. Intact?

A. Yes.

Q. What happened then? What did you do?

198 A. The boxes were opened, the tin container therein was taken out and opened and the contents of each box were taken out and placed in order and photographed by J. R. Dunlop in my presence.

Q. I will show you Government's Exhibit 26 for identification and ask you if that correctly portrays the boxes as they were in the garage prior to being opened?

A. That is right.

Q. Government's Exhibit 33 for identification portrays what?

A. That is a picture of the number 1 box after it had been opened and assembled in the position indicated and photographs of the material therein assembled taken.

Q. Does that correctly portray the box and the contents thereof as it was opened in your presence?

A. That is right, it does.

Q. I will show you Government's Exhibit 30 for identification and ask you if you can tell us what that is?

A. That is box number 4 had been opened and the contents thereof assembled and photographed, and placed therein as indicated as recited by me and photographed in my presence.

199 Q. Government's Exhibit 31 for identification portrays what?

A. It is the contents of box number 3 after it had been opened and assembled in the position indicated, and photographed in my presence at that time.

Q. Government's Exhibit 32?

A. That is the photograph of the number 2 box, opened, and the contents thereof assembled and photographed in my presence at that time.

Q. After the boxes had been opened and photographed and so forth, what was done?

A. The boxes were then individually reassembled and as each operation was completed on each box and everything placed in the box, the boxes were sealed up and left in the possession of D. J. Parsons.

Q. I show you Government's Exhibit 14 for identification as previously marked and ask you if you can tell us what that is?

A. That is the wood box from the number 1 box and my initials E. J. C., June 25, indicating that end or side, and there is an additional notation here of N. A. M.

Q. Is this the identical box number 1 as you marked it when it was uncovered in the sand near Ponte Vedra?

200 A. This was the box from the beach on—south of Ponte Vedra.

Q. What was done after you had put the contents of the boxes back in the boxes? What was done with the equipment?

A. All the boxes were again nailed up together, securely and placed in an automobile and taken to Jacksonville Federal Building and placed in the safe there in the possession of D. J. Parsons.

Q. What did you do thereafter?

A. On the following day I proceeded to New York.

Q. At some time subsequently in New York, did you have a conversation with Herbert Haupt?

A. I did.

Q. After that conversation did you make a telephone call to anyone?

A. I did.

Q. Who did you call?

A. I called Special Agent Leon O. Prior of the Miami office on the telephone.

Q. Did you give him some instructions?

A. I did.

Q. After you had given him these instructions by telephone did you later receive any other equipment from this beach down there at Ponte Vedra?

A. There was a package by express sent to the
201 Washington headquarters, arrived there about July 4, consisting of four caps and shovels.

Q. To whom was that directed? To you?

A. It was directed to the Director of the Federal Bureau of Investigation, Washington, D. C., said to have been shipped by Leon O. Prior.

Q. Did you open that box?

A. It was opened at that time, yes.

Q. Did you examine the contents thereof?

A. Yes, sir.

Q. I will show you Government's Exhibits 15, 16, 17 and 18 for identification, being four German military caps previously identified by Mr. Burger, and ask you if those are the caps which you received at that time or identical with them?

A. These are the caps with the four caps which we received at Washington at that time.

At that time they had a tag, probably put on by Leon O. Prior on each cap, marking them, which is now removed.

Q. I show you Government's Exhibit 13 and 12, for identification, and ask you if you can tell us what those are?

A. These are identical shovels. At that time they also
202 had tags of identification with the name of Leon O. Prior, plus the mark here, and a mark on the top of the shovel handle here, Leon O. Prior which is marked here and the date, July 2, 1942.

Q. Are those two markings that you have referred to the same on the top of the shovels, the same as the markings that you noticed on the shovels immediately when you received them?

A. That is right.

Q. In New York?

A. In Washington.

Q. Washington?

A. Yes.

Mr. FINN. I think that is all.

Mr. WARNHOLTZ. No cross-examination.

(No cross-examination, witness excused.)

LEON O. PRIOR, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. FINN:

Q. Will you state your name, please?

A. Leon O. Prior.

A. What is your occupation, Mr. Prior?

A. I am special agent of the Federal Bureau of
203 Investigation.

Q. How long have you been connected with the Federal Bureau of Investigation?

A. Four and a half years.

Q. To what office are you assigned?

A. Miami, Florida, division.

Q. Were you assigned to that office in June and July of 1942?

A. I was.

Q. Calling your attention to on or about June 25, 1942, did you accompany Mr. Earl J. Connelley, Mr. Parcons, together with a number of other agents, together with a prisoner, Edward Kerling, out to a place near the sands of Ponte Vedra, Florida?

A. I did.

Q. Were you present when these photographs of the digging operations took place?

A. Yes, sir.

Q. Did you know that spot after that time? Did you know the spot where the boxes had been uncovered?

A. I did.

Q. To shorten this up, these boxes were taken from that point to a garage in Miami or Jacksonville, is that correct?

A. Yes, sir.

204 Q. Subsequent to that time, a day or so later, did you receive a telephone call with instructions from Mr. Connelley?

A. Yes.

Q. Pursuant to those telephonic instructions, did you go out to the place where these digging operations had taken place?

A. I did.

Q. What did you do when you got there?

A. I dug some more in the vicinity of the place where the boxes had been found.

Q. How far did you dig from there, how did you know which way——

A. I dug north of the hole a distance of approximately forty feet.

Q. Will you tell us what you found there?

A. At a point of about thirty feet directly north of the hole where the box was exposed I recovered two trench shovels and four German marine caps.

Q. What did you do with those trench shovels and the German marine caps?

A. I sent then to the Federal Bureau of Investigation laboratory, Washington, D. C.

Q. I will show you Government's Exhibits 15 to 18, inclusive, being four German military caps and ask you if you can tell us whether those are the caps involved?

205 A. Yes; those are the caps that I uncovered.

Q. I show you Government's Exhibits numbered 12 and 13 for identification, and ask you if you can tell us what those are?

A. Yes. These are the two shovels that I uncovered.

Q. You sent those to the Bureau in Washington, is that correct?

A. Yes.

Mr. FINN. That is all with this witness, Mr. Prior.

Mr. WARNHOLTZ. No cross-examination.

(No cross-examination; witness excused.)

DONALD J. PARSONS, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. FINN:

Q. Will you state your name, please?

A. Donald J. Parsons.

Q. What is your occupation, Mr. Parsons?

A. I am Special Agent of the Federal Bureau of Investigation.

Q. How long have you been a Special Agent of the
206 Federal Bureau of Investigation?

A. Approximately 10 years.

Q. Did you work in any particular field with the Federal Bureau of Investigation?

A. Yes; I am the Special Agent in charge of the Physics and Chemistry Laboratory of the Federal Bureau of Investigation.

Q. How long have you been employed by the Federal Bureau of Investigation in that capacity?

A. In charge of the laboratory for less than a year.

Q. And prior to that time?

A. I have been in the laboratory almost the entire period of my service.

Q. Before joining the Federal Bureau of Investigation, what, if any scientific education did you have to equip yourself for this type of work?

A. I am a chemist, have a degree in chemistry from George Washington University and studied since my schooling, in other laboratories, commercial laboratories.

Q. Will you tell us in general what your duties are at the Federal Bureau of Investigation?

A. They are concerned with the scientific examination of physi-
cal evidence required in any of our investigations. My
207 particular field concerns explosives, sabotage devices, and munitions and related materials.

Q. What, if any experience have you had in that particular field?

A. Well, I have had the experience of a large number of examinations, covering the literature and the text books on the subject and working and consulting with other laboratories in that field.

Q. When sabotage devices are sent into the Bureau is it your duty to examine them, test them, determine what they are, and so forth?

A. It is.

Q. To take them apart?

A. Yes.

Q. Calling your attention to the 25th day of June, 1942, did you

proceed from Washington; or just prior to that date did you proceed from Washington to Florida?

A. I did, I arrived in Jacksonville, Florida, on June 25, 1942.

Q. I want to shorten this up. You won't object. Did you come to a point near Ponte Vedra?

A. I did.

Q. Where Kerling pointed to a spot in the sand, is that correct?

A. That is correct.

Q. Then you started to dig?

208 Mr. FINN. Do you mind if I lead a little bit? I want to shorten this up?

Mr. WARNHOLTZ. No objection.

A. I did.

The COURT. Just a minute.

(Conference between court and counsel not made part of the record.)

The COURT. Proceed.

By Mr. FINN:

Q. As these digging operations took place there were photographs made, were there not, of the various stages of the operations?

A. There were.

Q. I show you Government's Exhibits 27, 28 and 29 and 34. Do those correctly portray the boxes and equipment, explosive equipment, and so forth that you found in the sand there at Ponte Vedra?

A. These are correct pictures of the scene and the progress of the uncovering of the boxes.

Q. After you had uncovered these boxes did you take charge of them?

A. I did.

Q. Will you tell us what you did with them?

A. I placed them in an automobile and placed them in a private garage in Jacksonville, Florida. In that garage they were opened, photographed and repacked.

209 Q. I will show you Government's Exhibit 26 for identification and ask you if you can tell us what that is?

A. These are the four boxes recovered on the beach after they had been removed to the garage and photographed in the garage.

Q. That was before they were opened?

A. Before they were opened.

Q. Will you tell us what Government's Exhibit 33 for identification is?

A. For the sake of convenience we considered the boxes by number. This is a photograph of the first box or box number 1 that was opened.

Q. Did you examine the contents of that box thereafter?

A. I did.

Q. Will you tell us what was in the box?

A. In the box there were eighteen blocks of Trinitrotoluene or TNT as it is more familiarly known, which is a high velocity explosive.

Q. What do you mean by a high velocity explosive?

A. I mean the speed of this explosion is sufficiently high, it is used for demolition purposes and such things as cutting steel.

Q. Did you open up any of those blocks, that is, take off the paper wrapping and so forth?

210 A. I did.

Q. Will you describe one of those blocks to the jury?

A. Each block weighs approximately 1 kilogram which is the equivalent of 2.2 pounds. The blocks are approximately 5½ inches in length, 3¼ inches in width, about 2½ inches in thickness.

Each block has in the one end a hole to accommodate the detonator or initiating device, which is necessary to cause the explosion of such materials as TNT.

The blocks are solid material, yellow in color.

Q. Will you examine Government's Exhibit 32 for identification and tell us what that is?

A. This is a photograph of box numbered 2 after having been opened and the contents of this box were the same as those of number 1. That has 18 of the TNT demolition blocks.

Q. Did you open the other two boxes also?

A. I did.

Q. I will show you Government's Exhibit 30 for identification and ask you if you can tell us what that is?

211 A. This is a photograph of box numbered 4 after it was opened and showing the contents of that box.

Q. Will you tell us the various things that were in that box?

A. In this box there were no high explosives or bombs. This box contained exclusively detonators, fuses, incendiary devices and time mechanisms and materials; in other words, initiating devices or materials that would be used to set off the explosive or incendiary charge.

Q. Mr. Parsons, will you examine Government's Exhibit 31 for identification and tell us what that is?

A. That is a photograph of box number 3 after it had been opened and showing its contents.

Q. What did it contain?

A. It contained ten more of the TNT demolition blocks, four objects which were made to simulate lumps of coal and contained TNT charges, four coils of safety fuse, and one coil of detonating fuse.

Q. In general, will you describe, in order to shorten this—will you describe the various types of incendiary devices, detonators,

and explosive equipment that you found in these boxes; in these two boxes?

212 A. In addition to the demolition blocks which I have described and the four coal bombs which were high explosives, there were various materials that were used, or could be used, in a variety of ways to set up an explosive train or an explosive system, which would set off other bombs or charges or incendiaries.

That consisted of fuses which could be lighted and which would burn slowly, and fuse lighting devices or fuse lighters which contained the detonators, which are necessary in using high explosives, such as dynamite and TNT.

And detonators and several types of fuses that could be used with safety fuses, or could be used with various delayed devices, and time mechanisms.

It also contained adapters so that the special detonators could also be used with safety fuse. It contained small incendiaries so that the same system that is set up to explode the high explosives can also be used to start a fire after placing the small incendiaries.

In addition to that there were both chemical and mechanical delay devices. Such a mechanical delay device is this clock mechanism which provides for a delay of fourteen days.

There were a number of chemical delays, one disguised
213 as a pen and pencil set, and there were a small number of similar devices, such as to be used with sulphuric acid, after a shorter delay period.

Then there was one box containing abrasive materials for damage of lubricative machinery.

Q. You photographed each one of these things specifically, did you not?

A. They were photographed under my supervision.

Q. I am not going to ask you to describe many of these; just a few.

Calling your attention to Government's Exhibit 25 for identification, will you tell us what that portrays?

A. This is a photograph of what we call, or the device referred to as a coal bomb which contained a block of TNT, and then it is covered with a black plastic material and has an irregular surface that resembles coal. In one end of it there is a hole so the detonator can be inserted to set off the high explosives.

Q. Showing you Government's Exhibit 23 for identification, will you tell us what that is, Mr. Parsons?

A. This is one of the pen and pencil delay devices which were recovered in Florida.

214 Q. Will you explain to the jury how that operated? By the way, did you test any of these?

A. Yes; I tested all of the items. The pen and pencil part of it, of course, is simply a means of disguising. Actually the pencil originally contained a detonator which I removed. The pen contained a chemical combination of acid so that when the pen and pencil were put together in proper manner they formed a delay device.

Then by turning the end of the pen it is possible to start a reaction in a period of approximately eleven to thirteen hours, which would set off the detonator and which in turn would cause the explosion of the TNT.

Q. May this also be used as an incendiary?

A. Yes; it may be, by the substitution of one of the incendiary devices for the detonator that was contained in the pencil. All those items are interchangeable. It could be used to start a fire.

Q. By the way, do these write?

A. Yes; they write.

Q. I will now show you Government's Exhibit——.

Mr. FINN. Your Honor, the reporter wrote on the cellophane and I will have to describe it. I will show you Government's Exhibit, with the previous mark of Government's Exhibit
215 35 on it, consisting of a cardboard box flattened out.

Mr. WARNHOLTZ. That is exhibit 24.

Mr. FINN. 24, thank you.

(The Exhibit was marked "Government's Exhibit 24.")

By Mr. FINN:

Q. I show you Government's Exhibit 24 for identification and ask you if you can tell us what this is?

A. Yes. This is a type of small cardboard box which was contained in box numbered 4 and in this small box was contained what appears to be a plastic delay device, one of which is also in this envelope.

Q. I show you Government's Exhibit 22, for identification and ask you if you can tell us what that is?

A. This exhibit is one of the mechanical delays or time clock devices and can be used to set off either an explosive charge or an incendiary charge which would permit the delay of anything up to fourteen days.

Q. How is that operated, Mr. Parsons?

A. That is operated by winding the jewel mechanism and then setting the small firing pin which fires the little primer which is contained in the envelope.

Q. How many of those were in that box, of that equipment?

216 A. There were ten in the box in Florida.

Q. How many pen and pencil sets in there?

A. There were five.

Q. Were all of these exhibits contained in these boxes which you uncovered in the garage there at Jacksonville?

A. That is correct.

Mr. FINN. I think we might as well adjourn now.

The COURT. We will recess at this time until ten o'clock tomorrow morning.

Ladies and gentlemen, do not discuss the case nor permit anyone to discuss it with you and return at ten o'clock tomorrow morning. Just a moment please. Will counsel step up here a moment, please?

(Conference between court and counsel not made part of record.)

The COURT. I will tell you at this time that we will hold court tomorrow and on Monday; that there will be no court on Saturday so far as this case is concerned. There will be no court on Tuesday, being Decoration Day.

We will hold court tomorrow and on Monday but not on Tuesday. We will hold court again on Wednesday. I am telling that to you now so that you may make your arrangements
217 accordingly. Report tomorrow morning at ten o'clock.

(Whereupon an adjournment was taken to Friday, May 26, 1944, at the hour of 10:00 o'clock A. M.)

218 In the District Court of the United States for the Northern District of Illinois Eastern Division, at Chicago

UNITED STATES OF AMERICA

v.

HANS MAX HAUPT

Before Hon. JOHN P. BARNES, Judge and a Jury

Friday, May 26, 1944, 10:00 o'clock A. M.

Parties met pursuant to an adjournment.

Counsel present: Mr. J. Albert Woll, United States District Attorney for the Northern District of Illinois, Eastern Division, at Chicago, and Mr. Earle C. Hurley, and Mr. Richard C. Finn, Assistant United States District Attorneys for the Northern District of Illinois, Eastern Division, at Chicago, appeared for the United States of America; Messrs. Paul A. F. Warnholtz, Frederick J. Bertram appeared for the Defendant.

219 Mr. WARNHOLTZ. May it please the court, I should like to bring up something I do believe might be better discussed in your chambers.

The COURT. Very well. Step in the chambers, gentlemen.

(Thereupon the following proceedings were had in the court's chambers outside the presence and hearing of the Jury:)

Mr. WARNHOLTZ. I would like to state to your Honor, I feel somewhat disturbed about the testimony of Burger. I am more than convinced that man committed perjury.

I would like to state, because all of us being officers of the court, I think we are interested to the same extent to see that does not prevail.

I do remember Mr. Woll night before last, five minutes to four, after the close of the opening statement, I believe it was, about this way. It was a kind of a whispered conversation held between all of us. That he stated I should like to talk again with Mr. Burger before putting him on the stand. He asked if we had any objection to it. It was stated, no, we did not.

Now, yesterday Mr. Burger stated toward the end of his testimony that he had not discussed the matter as far as he could
220 remember with anyone after four o'clock of that day. He has, however, changed his testimony from the last time to fit my opening statement and, of course, I will be glad to take his word, the word of the District Attorney for it, whether or not he did. He committed perjury, Mr. Burger did, he stated he did not remember, and he certainly must have remembered everything as to the preceding day whether or not he discussed the case.

Mr. FINN. As far as I know, I don't think Mr. Woll talked with him.

Mr. HURLEY. I didn't even see him that day.

Mr. WARNHOLTZ. The Federal Bureau of Investigation was there at the time, but I do know that at the first trial of this case his testimony was different. At that time he stated distinctly Herbert Haupt should not see his parents in Chicago. He never made one single remark Herbert should come to Chicago. Yesterday in his direct examination he stated Herbert should come to Chicago at once.

Mr. FINN. My understanding is that the instructions, Mr. Warnholtz in his opening statement said that was one of his instructions, we don't deny that at all. My heavens, this man testified four hours, and because he omitted one little detail or thing——

The COURT. Well, of course, I remember Mr. Warnholtz's
221 opening statement was concluded about four o'clock, and Mr. Woll stepped up to me and said over the bench and in a whisper, the first witness for the United States will take some few minutes to get him here, and I inquired how long he would testify and was told he would be a long witness, somebody said he would take most of the day, and I think I suggested, perhaps,

it would be better to wait until the following morning to put on the witness for whom we would have to wait a few minutes anyhow.

Now, what else was said, I don't know. Now, of course, I am not to judge that. The burden is not put upon me preliminarily to judge the truth of falsity or credibility of a witness, but I did observe this about that witness; he answered your specific question every time as meticulously as I have ever observed a witness answer, and whatever specific question you asked was answered.

Mr. WARNHOLTZ. Yes.

The COURT. I don't have any hesitancy in saying, as far as I could tell the man was telling the truth. Now, when you asked him if he had a conversation with anybody after four o'clock—in the first place, the man, I think, didn't know what day it was until he was orientated; that is, he is in custody. He doesn't have to go to work at five or six o'clock, or in five or six days. I think honestly he didn't know what day it was when he was testifying until he got orientated, and somebody told him it was Thursday. Now, you are asking him if he had a conversation after four o'clock, and he said in effect he didn't know or he didn't remember, or he said, I don't recall.

Mr. WARNHOLTZ. Did not remember.

Mr. BERTRAM. Mr. Woll brought it, and he apparently was quibbling about it, and he said——

The COURT. Now you say quibbling; as far as I could tell that man was answering the very questions submitted to him, and no other.

Mr. BERTRAM. He has got great mental ability, there is no question about it.

The COURT. Yes; he has extraordinary ability.

Mr. BERTRAM. And personality.

The COURT. A very extraordinary mental capacity. I thought he did a good job answering these specific questions, as well as I have ever seen it done, so I wouldn't think he was lying when he said he didn't remember whether he talked before four o'clock or after. He is in custody. He doesn't have to worry about getting to work at five o'clock or four-thirty, or any other time. He just gets up, I assume, when somebody awakens him, and he eats breakfast if somebody brings it to him, and he eats lunch if somebody brings it to him, and many other things, he does the best he can to kill time. I think I would, under the circumstances, try to forget the passage of time; otherwise I don't see how a man in custody could live if he couldn't get away from some of that. I don't know. Where is Mr. Woll?

Mr. FINN. He will be here in a few minutes. I think we can get him up here if you want him.

The COURT. If he said he didn't talk with him, that is the end of that.

Mr. FINN. Just a minute, your Honor, I recollect now, I have a distinct recollection now of some circumstances that might have something to do with this. You would be surprised, Mr. Burger has a very high pulse.

The COURT. I wouldn't be a bit surprised at that.

Mr. FINN. I talked with Mr. Woll on Sunday when the question came up. I recollect now when the question came up, whether we should talk with him last night before he went on the stand, and Mr. Connelley informed us that the doctor said he
224 didn't think it advisable to talk to Mr. Burger last night.

I recollect now, I didn't before, and for that reason he was not brought down last night or the night before.

The COURT. I wouldn't be surprised if that man did have a high pulse. I would be surprised if he didn't. That man is not without stress and strain.

Mr. FINN. His pulse was 160 when he got off of the stand yesterday, and for that reason, Mr. Connelley, the doctor advised him it wasn't advisable to talk to Burger, and we didn't talk to him.

Mr. BERTRAM. We include anyone.

Mr. HURLEY. I didn't talk to him.

Mr. FINN. I didn't talk to him.

Mr. HURLEY. I didn't see him.

Mr. BERTRAM. The Department of Justice, the FBI, that includes them. He was not going to talk to anyone that afternoon.

Mr. FINN. Well, he didn't; as far as I know, he didn't. Now that the circumstances are recalled to me, Mr. Woll told me that Mr. Connelley had called him to one side and said he didn't think it advisable to talk to Mr. Burger because his pulse was high and it excited him.

225 Mr. WARNHOLTZ. Well, we will be glad to accept that.

One slight other point, if your Honor please, the matter of overt acts that will be brought up on which there will be only one witness. I believe Mr. Finn stated the law to be that that is entirely in harmony with many cases. I have not found any of them. I think we should submit a brief, because that will come up during the trial.

The COURT. What is that? I beg your pardon.

Mr. WARNHOLTZ. The matter of bringing up the overt acts. The government knows there is only one witness and Mr. Finn maintains there is a long line of cases which permits it. I have not found such cases. I do know this, however, that in the Aaron Burr case——

Mr. FINN. I can give you the decision in the cases.

The COURT. Here is Mr. Woll now.

Mr. WARNHOLTZ. Mr. Woll it is questioned whether or not Mr. Burger testified falsely when he stated he did not remember whether or not he discussed the case with you in the afternoon was my first question after four o'clock.

Mr. WOLL. I think I remember your question.

Mr. WARNHOLTZ. And I was under the impression someone had talked to him.

226 Mr. WOLL. I didn't talk to Burger from Sunday until I put him on the stand.

Mr. WARNHOLTZ. Well, we are quite satisfied with that, with the exception he said, you said, "Hello" to him before he went on the stand.

Mr. WOLL. I didn't talk to him about the case at all; not one word about the case from Sunday on.

Mr. BERTRAM. We thought you might.

Mr. WOLL. I will tell you now, I was in St. Louis, and I came back from St. Louis Saturday night and I talked with Burger Sunday, and you know we went right into the trial Monday and Burger wasn't even told, as far as I know until morning of the night before we put him on the stand.

Mr. BERTRAM. And you didn't get a chance to ask him until after adjournment?

Mr. WOLL. No.

Mr. WARNHOLTZ. I am quite well satisfied then.

Mr. WOLL. I think you can understand that very well. There were a lot of guards around him. The man is in custody.

Mr. BERTRAM. Nobody talked with him, you said.

Mr. WARNHOLTZ. We are satisfied, Mr. Woll. Thank you very kindly.

The COURT. The question whether or not they may
227 put in proof of overt acts where a certain incident is charged as an overt act, and they only put in evidence of one witness——

Mr. WARNHOLTZ. That is right.

The COURT. Whether that can be done?

Mr. WARNHOLTZ. Yes, sir.

The COURT. Well, you will have briefs on that, I suppose.

Mr. WOLL. Well, of course, it is our contention there is no question about it, but it can be done.

The COURT. Have you seen this?

Mr. WARNHOLTZ. I have a copy right here.

Mr. BERTRAM. The rest is in the brief.

Mr. FINN. It is about 250 pages long, Judge, the actual recording in the District Court, what it actually was in the Berg case.

The COURT. This is not for the record.

(Discussion off the record not reported.)

The COURT. All right, we will proceed with the trial.

(Thereupon the following proceedings were had in the courtroom outside the presence and hearing of the Jury:)

The COURT. You may proceed. Bring in the Jury.

228 (Thereupon the following proceedings were had in the courtroom in the presence and hearing of the Jury:)

The COURT. Good morning, ladies and gentlemen.

Several JURORS. Good morning.

The COURT. You may proceed.

Mr. FINN. Mr. Parsons.

D. J. PARSONS, resumed the stand for further examination, after having been previously sworn, was examined and testified as follows:

Direct examination (resumed) by Mr. FINN:

Q. You were on the stand, Mr. Parsons, and you were testifying in this courtroom yesterday afternoon when we adjourned?

A. I was.

Q. Mr. Parsons, in addition to the various exhibits and photographs, which you have identified here, there were a number of other exhibits and photographs, were there not?

A. Yes; there were many of them that are material, of course, that have not been exhibited because they are explosives and dangerous to handle.

Q. This represents photographs of the boxes after

229 they were opened, however, and include all those materials, do they not?

A. They do.

Q. And in general were described by you in your general description of the material and files; is that correct?

A. That is correct.

Q. In that event, I think, Your Honor, I will offer just these that have been identified, and I should like to offer at this time, Your Honor, the following Government's Exhibits.

Government's Exhibit No. 22, which is a time delay clock, and which was identified both by Mr. Burger, and testified to by Mr. Parsons as having been found in this cache in Florida.

Government's Exhibit 23 is a fountain pen and pencil set which was identified by Mr. Burger and testified to by Mr. Parsons as having been found in the cache in Florida.

Government's Exhibit 24, being a cardboard paper and metal detonator, which was positively identified by Mr. Burger and Mr. Parsons alike as having been found in Florida.

Government's Exhibit 25, being a photograph of the coal,

230 and also identified by Mr. Burger and by Mr. Parsons, and Mr. Parsons testified further, found in Florida.

Government's Exhibit 26, being a photograph of four wooden boxes taken at the garage before they were opened, which was identified by Mr. Burg[illegible] and Mr. Parsons.

Government's Exhibit 27, which is a photograph of the Ponte Vedra Beach before the digging operation began, and identified by Mr. Connelley and Mr. Parsons.

Government's Exhibit No. 28, being a photograph of two boxes in the pit at Ponte Vedra, identified both by Mr. Connelley and Mr. Parsons.

Government's Exhibit No. 29, being a photograph of box number 4 in the sand pit at Ponte Vedra, identified by both Mr. Connelley and Mr. Parsons.

Government's Exhibit 30, which is a photograph of four boxes, number 4, after it was opened in the garage in Jacksonville, and identified by Mr. Connelley and Mr. Parsons.

Government's Exhibit 31, being a photograph of box number 3 after it was opened in the garage in Jacksonville, and identified by Mr. Connelley and Mr. Parsons.

Government's Exhibit 32, being a photograph of number
231 2 box after it was opened, and identified by Mr. Connelley and Mr. Parsons.

Government's Exhibit No. 33 is a photograph of box number 1 after it was opened and identified by Mr. Connelley and Mr. Parsons.

Government's Exhibit No. 34 is a photograph of the four boxes after they had been taken out of the sand in the pit in the beach of Ponte Vedra, and identified by both Mr. Parsons and Mr. Connelley.

All of those exhibits are offered for the purpose of showing Herbert Haupt was an enemy agent and that he came to this country on a mission of sabotage for the German Government and are to be limited to that issue.

Mr. WARNHOLTZ. I would state, Your Honor, the defense has no objection to the introduction of this evidence for the purpose of showing the enemy status of Herbert Haupt and for the time and up to the time that he landed in Florida, and for the purpose of showing that he was sent to this country on a mission and subject to instructions by the German Government.

We do not wish to admit that he carried out any part of that mission or had it in his mind. These others, perhaps, better be eliminated or let it be stated that these exhibits are received
232 for the purpose of proving the enemy status of Herbert Haupt at that particular time he landed in Florida.

Mr. FIXX. Well, the exhibits are offered for the purpose of proving the allegations of the indictment to the effect that Herbert Haupt was engaged in a mission to this country for the German Government.

The COURT. I think they may be received.

(Thereupon the documents, so offered in evidence, were marked and received in evidence as "Government's Exhibits 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, and 34," and are in words and figures as follows, to wit:)

Mr. FINN. Pardon me, I have some more.

I also wish to offer in evidence at this time Government's Exhibit 14 for identification. This box was uncovered in the sands of Florida, and identified by both Mr. Connelley and Mr. Parsons.

The COURT. What sort of metal was that in that box?

The WITNESS. Pure tin.

Mr. FINN. I also wish to offer in evidence at this time Government's Exhibit 12 and number 13, being the shovels and spades which were identified by Mr. Leon Prior, and also identified by Mr. Burger.

The COURT. They may be received.

(Thereupon the documents, so offered in evidence, were marked and received in evidence as "Government's Exhibits Nos. 12 and 13," and are in words and figures as follows, to wit:).

By Mr. FINN:

Q. I will show you this box marked "Government's Exhibit 14" for identification, and ask you if you have ever seen that before?

A. I have.

Q. Where did you first see it?

A. In the sand on the beach at Ponte Vedra, Florida.

Q. After you had uncovered it from the sand pit there, did anyone mark the box?

A. Yes.

Q. Who marked it?

A. Mr. Connelley marked it in my presence.

Q. And do you recognize the mark on this box now that was put on there by Mr. Connelley at that time?

A. I do.

Q. And subsequently took charge of this?

A. What is that?

Q. You subsequently took charge of this?

A. I did.

Q. And opened it in the garage subsequently in Jacksonville; is that correct?

A. That is correct.

Mr. FINN. I also desire to offer in evidence at this time Government's Exhibits 15, 16, 17, and 18 for identification, being the four German Marine caps which were identified by Mr. Burger and Mr. Leon Prior; both. These exhibits and the

box are also offered to prove the same issues as the other exhibits. I take it, 14 is also received.

The COURT. They may be received.

(Thereupon the documents, so offered in evidence, were marked and received in evidence as "Government's Exhibits 14, 15, 16, 17, and 18," and are in words and figures as follows, to wit:)

236 Mr. FINN. I think that is all.

Mr. WARNHOLTZ. No cross-examination.

Mr. FINN. Mr. Leibl.

WILLIAM FRANCIS LEIBL, called as a witness on behalf of the Government, after having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. FINN:

Q. Will you state your full name, please?

A. William Francis Leibl.

Q. How do you spell your last name for the record?

A. L-e-i-b-l.

Q. Where do you live now?

The COURT. How is that spelled?

The WITNESS. L-e-i-b-l.

Q. Francis?

A. That is right.

by Mr. FINN:

Q. Where do you live, Mr. Leibl?

A. I am now stationed in Tennessee.

Q. At what Camp?

A. We are now in the maneuvering area at Tullahoma, Tennessee.

Q. You say out on maneuvers: is that correct?

A. That is right.

237 Q. What Camp were you assigned to?

A. We drew rations from Camp Forrest, Tennessee.

Q. You have a sort of a roving address, I take it?

A. That is right.

Q. How long have you been in the United States Army?

A. About one year and four months.

Q. And prior to that time where were you?

A. Before that month, before joining the Army in the Marine Corps for two months.

Q. Now, were you born in this country?

A. Yes; I was.

Q. And how long did you live in this country before you went anywheres else?

A. Sixteen years.

Q. Where did you live when you lived in this country?
A. In Chicago and South Bend, Indiana.
Q. And then where did you go?
A. From there we went to Germany.
Q. Will you tell us approximately when you left; you say "you," you mean your family, do you?
A. That is right, sir.
Q. When did you leave for Germany?
A. We left, as I told you, April 27th, 1939.
Q. What business was your father employed in before he took you and your family to Germany?
238 A. He was an interpreter at the Studebaker in South Bend.
Q. Was he born in this country?
A. No; he wasn't. He was born in Germany.
Q. Now, after you had gone back to Germany, where did you live?
A. For three months; the first three months we lived in Hamburg, Germany.
Q. I forgot what you said when you went back. Tell me again, please.
A. In April 1939.
Q. What occupation did your father take up in Germany?
A. Well, in Hamburg he was given a position as translator for the German Labor Party temporarily.
Q. And after that?
A. After that we moved to Stuttgart, and then he worked——
Q. For whom?
A. For the German Propaganda Ministry.
Q. Where did you live during that period of time?
A. In Stuttgart.
Q. Did you take up any occupation there?
A. The first year I worked as an electrical apprentice; then after as a milling man. The last two years I was in Germany I studied photography.
Q. Your father was employed by the German Propa-
239 ganda Agency, is that correct?
A. That is right.
Q. Who headed that agency?
A. Joseph Goebbels.
Mr. WARNHOLTZ. I object as immaterial to bringing this out.
By Mr. FINN:
Q. Now, how long, do you remember?
The COURT. Let it stand.

By Mr. FINN:

Q. Now, how long do you remember, did you remain in Germany before you came back to the United States?

A. Three years.

Q. While you were there in Germany, did you meet a boy by the name of Herbert Haupt?

A. Yes; I did.

Q. I will show you Government's Exhibit No. 3 for identification and ask you if you can tell us who that is.

A. Herbert Haupt.

Q. Can you tell us approximately when it was you met Herbert Haupt in Germany?

A. About May 1, 1922.

Q. And will you tell us the occasion upon which you met him and how you happened to meet him?

240 A. He came to visit my father in our homes on a social visit.

Q. Were you there when he arrived?

A. No, I wasn't; I was at work.

Q. Well, did he come back later on in the evening.

A. Yes, he did; he came about six o'clock in the evening.

Q. Were you there when he arrived then?

A. Yes, I was.

Q. Will you tell us just what he did when he first arrived there?

Mr. WARNHOLTZ. I object to that, your Honor. I do know what the response is Mr. Finn wants.

It relates to a conversation between Herbert Haupt, who is now dead, and we cannot refute the testimony. It is absolutely hearsay testimony. It is not essential for the purpose of proving the enemy status of Herbert Haupt. It is made for the purpose of prejudicing the minds of the jurors as to that particular time.

The COURT. You may step in my chambers.

(Thereupon the following proceedings were had in the court's chambers outside the hearing and presence of the Jury:)

The COURT. What do you expect to prove?

Mr. FINN. I expect to prove—[reading.]

241 Off the record.

That is in substance what we desire to prove by this witness.

Mr. WARNHOLTZ. May I point out the type of testimony, the very specific question, what was the first thing Herbert Haupt did. He said Heil Hitler—it is for the purpose of creating prejudice, not for the purpose of proving the enemy status of Herbert Haupt. We have no means of refuting any of this, and it is strictly hearsay evidence. We object to bringing in such evidence of his status.

If it is permissible at all—however, it is also cumulative and when the Government gets through with their part, the Jury is so prejudiced that we will be totally unable to change their minds by reason of the prejudice created by it.

The COURT. I think the Government is entitled to show the character of the person to whom the defendant is alleged to adhere and to whom he is charged to give aid and comfort. I think the evidence is permissible for that purpose. Evidence is not excluded for the reason it is impossible and difficult to refute. That is not the reason evidence is excluded.

242 Mr. BERTRAM. Our objection is under the hearsay evidence rule.

The COURT. Well, it is received as verbal acts of what he did say and do, and among other things, he talked and uttered sounds by means of his mouth; verbal acts.

Mr. BERTRAM. Well, usually under the hearsay rule, to permit a witness he had a conversation——

The COURT. That is where hearsay applies. No; I think it is admissible as verbal acts. What did he do? You are trying to find out what kind of a man he was at that time. What did he do and say, and that is the way to find out. Overruled.

(Thereupon the following proceedings were had in the courtroom in the presence and hearing of the Jury:)

Mr. FINN. Read the last question.

(Last preceding question read by the reporter.)

The WITNESS. The first thing he did was to raise his hand and make a German salute and said, "Heil, Hitler."

By Mr. FINN:

Q. Now, who was present that evening at your home?

A. My mother and myself when Haupt came in.

Q. And did your father later come there?

243 A. That is right.

Q. Anyone else?

A. And my brother and another boarder.

Q. What was his name?

A. Deidrich Busch.

Q. How long did Herbert Haupt remain at your home that evening?

A. About two hours.

Q. And after that two hours had expired, did you go anywhere with him?

A. Yes; we went to Stuttgart first.

Q. When you say "we," whom do you mean?

A. My brother, Herbert Haupt, this boarder, Deidrich Busch, and myself.

Q. You say you went to Stuttgart?
A. That is right.
Q. How far did you live from Stuttgart at that time?
A. About three miles.
Q. And what did you do at Stuttgart?
A. We stayed at the train station and I suggested we go out on a party. My brother didn't have his clean clothes on. He went back with Deidrich Busch and after we were at the station, we then went to Untuerkheim.
Q. What is that?
A. That is a small city outside of Stuttgart.
244 Q. What did you do there?
A. We went to his hotel where he said his aunt was living, and we met his aunt, and he told her that we were going out on a party to Stuttgart.
Q. When you speak of his aunt, how did he speak to the aunt, in German or in English?
A. In German.
Q. Now, after he had spoken with the aunt after you had met her, did you go anywhere thereafter?
A. We went back to Stuttgart to a night club where we met my brother and his other friend.
Q. And how long did you remain at the night club, if you remember?
A. Until about one o'clock.
Q. Now, during the course of the evening that you spent with Herbert Haupt, did you have any conversations with him relative to how he happened to get to Germany or what he was doing in Germany?
A. Yes; we did.
Q. Will you tell us what he told you on that occasion, first go slowly and keep your voice up so that we can hear you?
A. He said that he was being trailed by the FBI here in the United States and that was for operating Nazi propaganda,
245 so he had to leave the country, whereupon he went to New Mexico, and he said he crossed the Rio Grande.
Q. Did he say who went with him?
A. He said that two friends had went with him, he didn't mention the name of the friends and they crossed the Rio Grande and they dumped their car there by the Rio Grande and while crossing, that is when one of the buddies was shot.
Q. What else did he tell you?
A. He said after that he went to Mexico.
Q. Did he tell you where the other boy who had been with him, whether he continued on to Mexico with him?
A. That is right.

Q. Tell us what he said they did.

A. They went to Mexico City and contacted the German Consul.

Q. Yes.

A. And received enough money to charter a plane to South America, and from South America——

Mr. FINN. Go slowly, please.

The WITNESS (continuing). They got on to a Japanese freighter and went up to San Francisco, and from San Francisco they went to Yokohama.

Q. Did anything happen in San Francisco Harbor there?

A. Yes. He said in order to keep from being arrested by the FBI he had the Japanese Captain put him in chains
246 as a political prisoner for Japan.

Q. Where did you say he went to from San Francisco?

A. To Yokohama.

Q. What did he say they did in Yokohama?

A. I believe they contacted the German Consul there and received enough money to go to Tokio and in Tokio they stayed there until they got aboard a German freighter.

Q. Tell us about that.

A. He said they traveled 180 days around Africa into France.

Q. Did he tell you what they did when they got to France?

A. They stayed about one day in France, then went to Berlin.

Q. Go ahead and tell us what else he told you.

A. He said he was doing some secret work in Berlin for the German Army, and he then came down to Stuttgart and visited my father.

Q. By the way, did he say for whom he worked?

A. Yes; worked for Walter Kappe.

Q. Did you know Lieutenant Walter Kappe?

A. Yes; I did.

Q. By the way, had you ever met Kappe in the United States before you had come over to Germany?

247 A. No; I hadn't.

Q. What position did Lieutenant Walter Kappe hold in the German Army at that time, if you know?

A. Lieutenant in the Infantry.

Q. I will show you Government's Exhibit 1 for identification and ask you if you recognize that photograph?

A. That is Lieutenant Kappe and his wife.

Q. Where did they live, these Kappes?

A. Stuttgart.

Q. Now, was there any conversation either at your home that evening, or at the night club with reference to your proposed traveling back to America?

A. Yes; there was.

Q. Where did that conversation take place?
A. At the dinner table at home.
Q. Will you tell us what was said?
A. My father told him that I was going back to the United States very shortly.
Q. Had you previously informed your father you were not going to stay in Germany, is that right?
A. That is right.
Q. I take it, you didn't agree with him on his political affiliations?
A. That is right.
Mr. WARNHOLTZ. Objected to, your Honor.
248 The COURT. Sustained.

By Mr. FINN:

Q. Now, what did Herbert Haupt say when your father said that?
A. Well, he said that the German Gestapo would remember all of those persons who went back to the United States at this time.
Q. Now, you remained with him, I think you said, until about one o'clock in the morning?
A. That is right.
Q. Where did you go then?
A. From there we took a train back to where we lived and then went to Untuerkheim also, and——
Mr. FINN. Go slowly, please.
The WITNESS. We got off the train there and Herbert Haupt went on further.
Q. That is the last time you saw him, I take it?
A. That is right.
Q. Did you see him at all after that?
A. No; I didn't.
Q. Now, when did you leave Germany?
A. I left Germany May 16, 1942.
Q. And how did you get back to the United States?
A. By diplomatic exchange.
Q. What vessel?
A. S. S. "Grottningham."
Mr. FINN. I think that is all with this witness.
249 Mr. WARNHOLTZ. No cross-examination, your Honor.
Mr. HURLEY. Mr. Speer.

F. W. SPEER, called as a witness by the Government, after having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. HURLEY:

Q. Will you state your name, please?
A. F. W. Speer.

Q. Spell your last name.
A. S-p-e-e-r.
Q. Where do you live, Mr. Speer?
A. Jacksonville, Florida.
Q. And what is your business or occupation?
A. Hotel business.
Q. What was that?
A. Hotel business.
Mr. HURLEY. Speak up, please, so that we can hear you back here.
The WITNESS. Excuse me. Hotel business.
Q. In what capacity?
A. Now, I am Assistant Manager of a hotel.
Q. What hotel is that?
A. George Washington hotel.
250 Q. And what was your business or occupation in the month of June, 1942?
A. I was in the hotel business as a room clerk. Assistant Manager of the Mayflower Hotel.
Q. What was your occupation in June 1942?
A. I didn't hear the year.
Q. 1942.
A. Mayflower Hotel.
Q. You were a clerk there at that time?
A. Yes.
Q. On what streets in Jacksonville is the Mayflower Hotel?
A. Bay and Julia Streets.
Q. Now, calling your attention to the 17th day of June, were you on that day a clerk in the Mayflower Hotel?
A. Yes, sir.
Q. About what time did you come on that day?
A. I believe the afternoon, sir.
Q. Was that around noon, shortly after noon, was it?
A. Twelve o'clock.
Mr. HURLEY. Mark these documents "Government's Exhibits 36 and 37" for identification, please.
(Thereupon the documents were marked as requested "Government's Exhibits 36 and 37" for identification.)
By Mr. HURLEY:
251 Q. I will show you a document marked "Government's Exhibit 36" for identification, and ask you if you have seen that before, Mr. Speer?
A. Yes, sir; I have.
Mr. HURLEY. Keep your voice up so that I can hear you down here.

The WITNESS. I say, I have.

Q. On or about what date?

A. June 17, 1942.

Q. Was any part of that card made by you?

A. Yes, sir; all along the bottom here was my initials in the corner.

Q. Was it signed in your presence?

A. Correct; yes, sir.

Q. Is that what is known as a register card, is that correct?

A. That is right.

Q. The name "Herbert Haupt" and the address "4444 Western Avenue, Chicago, Illinois," was that written on there in your presence?

A. It was.

Q. I will show you Government's Exhibit 37 for identification, and ask you when was the first time you saw that?

A. I saw that at the same time, June 17, 1942.

Q. While your were on as day clerk in the Mayflower Hotel; is that correct?

252 A. That is correct; yes, sir.

Q. And what portion of that writing on that card is in your handwriting, Mr. Speer?

A. The room number. This initial. That "C-716" and my initials there.

Q. Now, what rooms did those two individuals whose names appear as William Thomas and Herbert Haupt occupy on that floor?

A. Room 716 and room 718.

Q. Were those adjoining rooms?

A. They are; yes, sir.

Q. I will show you Government's Exhibit 6, in evidence, and ask you if you have seen that individual before?

A. Yes, sir.

Q. Where did you see him?

A. I saw him at the desk in the Mayflower Hotel.

Q. June 17, is that correct?

A. Yes, sir.

Q. And is that the same individual who signed the register card, Government's Exhibit 36 for identification, signed in the name "Herbert Haupt, 4444 Western Avenue, Chicago, Illinois"?

A. That is the one.

Q. Now, how long did those individuals, Herbert Haupt, the person named William Thomas, as shown on these register cards, remain in your hotel?

A. Overnight and checked out the following day, sir.

253 Q. And what time was it when they checked into the hotel?

A. It was shortly after I came on, around one o'clock, I believe.

Q. Is there anything on the register card which would tell y

A. There should be a time stamp. I am not sure. Yes, sir; 1:02. 1:02.

Q. 1:02 P. M.?

A. 1:02 P. M.; yes, sir.

Q. On June 17th, is that correct?

A. June 17th is right.

Mr. HURLEY. Mark these 38 and 39 for indentification, and this, 40 for identification.

(Thereupon the documents were marked as requested, "Government's Exhibits 38, 39, and 40," for identification.)

Mr. HURLEY. Q. I will show you Government's Exhibits 38 and 39 for identification, and ask you if those are part of the records of the Mayflower Hotel?

A. They are; yes, sir.

Q. By whom were they made?

A. I made those out.

Mr. HURLEY. Speak up so we can hear you.

The WITNESS. I made out the name on each one and the room number.

Q. And on Government's Exhibit 38 it shows the name
254 "Thomas, Room 718," is that correct?

A. That is correct; yes, sir.

Q. And Exhibit No. 39 shows the name "Haupt" with "Room 716," is that correct?

A. That is correct, sir.

Q. I will show you Government's Exhibit 40, and ask you if that is part of the records of the Mayflower Hotel?

A. That is one; yes, sir.

Q. Did you have anything to do with the preparation of that record?

A. No, I had nothing to do with the preparation of that.

Q. By whom was that kept?

A. By the—Let us see on that one there, please. That is the porter sheet, who kept that record.

Q. Is it a record of the bellboy call sheet, is that correct?

A. That is correct.

Q. Now, then, these exhibits I have shown you, 36, 37, 38, and 39, were all made by you in the regular course of your business as clerk in the Mayflower Hotel, Jacksonville, Florida, is that correct?

A. Yes, sir; that is correct.

Q. What about the date there, is that correct?

255 A. That is correct; yes, sir.

Q. Now, after these individuals who signed these register

cards by the name of William Thomas and Herbert Haupt, appearing there, were there any visitors in the hotel that afternoon?

A. Yes, sir; there was.

Q. About what time?

A. About 3 o'clock I think is correct.

Q. That same afternoon?

A. That same afternoon; yes, sir.

Q. And was there inquiry made by that individual?

A. This party asked for room number—Oh, Herbert Haupt, and Thomas.

Q. And did you give that individual the room number?

A. I gave him the room numbers.

Q. What room numbers were those?

A. 716 and 718.

Q. I will show you Government's Exhibit 9, and ask you whether or not that is one of the individuals who appeared at your hotel that afternoon you just described?

A. He is the individual that made the inquiry.

Mr. WARNHOLTZ. What number is that, Mr. Hurley?

Mr. HURLEY. Number 9.

Mr. WARNHOLTZ. That is the zipper bag.

Mr. HURLEY. Not according to this. No, pardon me, that is number 5. Let the record show I was referring to Government's Exhibit 5, which had previously been admitted into evidence as the photograph of Kerling.

256

Q. Are you familiar with the location of the Seminole Hotel?

A. Yes, sir; I am quite familiar with it.

Q. Jacksonville, Florida?

A. Yes, sir.

Q. Where was that located with reference to the Mayflower Hotel?

A. Two blocks from the Mayflower Hotel.

Q. And what is the street address of the Seminole?

A. Forsythe and Hogan, I believe, two blocks over from the Mayflower.

Mr. HURLEY. Mark this "Government's Exhibit 41" for identification and this, 42 for identification.

(Thereupon the documents were marked as requested, "Government's Exhibits 41 and 42" for identification.)

By Mr. HURLEY:

Q. Do you know the phone number of the Seminole Hotel?

A. Number 51241.

Q. I will show you Government's Exhibit 42, and ask you if that is part of the records of the Mayflower Hotel?

257 A. Yes, that is the room telephone call charge there.

Q. I will show you Government's Exhibit No. 14 and ask you if that is part of the record of the Mayflower Hotel?

A. Yes, sir; that is the account card.

Q. I will show you Government's Exhibit 43 for identification.

A. That is also an account card.

Q. Also an account card of the Mayflower Hotel, is that correct?

A. Yes, sir.

Q. Showing the account of Herbert Haupt, is that correct?

A. Herbert Haupt; yes, sir, and Thomas.

Q. The other one shows number 419 account, Thomas, William Thomas, is that correct?

A. William Thomas; yes, sir.

Q. And this Government's Exhibit 42, which you say is a personal record of a local phone call to number 51241, was made from what room in the Manflower Hotel?

A. Room 718.

Q. And can you tell from the records, Mr. Speer, the time that the individuals checked out of the Mayflower Hotel?

258 A. That should be time stamped; yes, sir, on the account cards, they checked out on June 18th, at 8:03 A. M.

Q. 8:03 A. M.?

A. That was William Thomas, and Herbert Haupt checked out and paid his account on June the 18th, at 7:37 A. M.

Mr. HURLEY. Cross-examine.

Mr. WARNHOLTZ. May I see the exhibits, please?

No cross-examination your Honor.

(Witness excused.)

Mr. HURLEY. Mr. Driver.

JAMES A. DRIVER, called as a witness on behalf of the Government, after having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. HURLEY:

Q. Will you state your name, please?

A. My name is James A. Driver.

Q. How do you spell your last name?

A. D-r-i-v-e-r.

Q. Where do you live, Mr. Driver?

A. Jacksonville, Florida.

Q. And what is your business or occupation?

A. I am manager of the Mayflower Hotel.

259 Q. How long have you been manager of the Mayflower Hotel?

A. Eight years.

Q. And that hotel was located in Jacksonville, Florida, and is, is it not?

A. Yes.

Q. And you were therefore the manager during the month of June 1942; is that correct?

A. I was, right.

Q. Mr. Driver, I will show you Government's Exhibit 36 and Government's Exhibit 37, and ask you if they are part of the records of the Mayflower Hotel in Jacksonville, Florida, of which you are the manager?

A. They are; yes, sir.

Q. I will also show you Government's Exhibits 38 and 39, and ask you if they are also a part of the permanent records of the Mayflower Hotel?

A. Yes, sir; they are.

Q. I will show you Government's Exhibit 40, and ask you if that is part of the records of the Mayflower Hotel?

A. It is; yes, sir.

Q. And what is that particular record, Mr. Speer?

A. That is the bellboy record of calls that are made from
260 guests requesting any one of a half dozen things; ice, or baggage, or something like this, and this is a record we keep when the bellboy goes to the room to bring something down, or goes up and takes something up there. It is a service record.

Q. The entry there, 716, that was made to room 716 at that time?

A. It indicates that 716 called up.

Mr. HURLEY. Speak up.

The WITNESS. The man in this particular room called up and asked that a boy come up there, and all that, what it was.

Q. And Government's Exhibit 43—42 and 43, are those part of the permanent records of the Mayflower Hotel?

A. They are; yes, sir.

Q. And they are the account records, isn't that correct?

A. That ledger card of these two persons whose names are on there.

Q. And now these exhibits which I have just shown to you you stated are part of the permanent records of the Mayflower Hotel?

A. They are.

Q. They are kept in the usual ordinary course of business, is that correct?

261 A. Yes, sir.

Q. They are kept under your supervision as manager of the Mayflower Hotel?

A. That is right.

Mr. HURLEY. At this time, if the court please, I will offer in evidence Government's Exhibits 36, 37, 38, 39, 40, 41, 42, and 43.

Mr. WAINHOLTZ. May I ask the court to have an opportunity to examine those records? I know there are objections to some of

them. I have not had an opportunity to see which is which, and it is almost impossible to hear what Mr. Hurley says.

Mr. HURLEY. There is no objection if he wants to examine them.

262 Mr. WARNHOLTZ. If your Honor please we object to the introduction of the exhibits marked for identification, "Government's Exhibits 37, 38, 41, and 42," being transactions with a party by the name of Thomas. We do not know a Thomas, and he is not a party to this case, nor has he anything to do with the transaction involved as far as I can see it.

Mr. HURLEY. Which ones are you objecting to?

Mr. WARNHOLTZ. I will give you the numbers again, 37, 38, 41, and 42.

The COURT. Has the photograph of Thomas been identified?

Mr. WARNHOLTZ. We do not know who he is so far.

Mr. HURLEY. He has not been identified in Florida.

The COURT. Has the photograph of the man registered as Thomas been identified?

Mr. HURLEY. No, it has not.

Mr. BERTRAM. Not in this evidence. The offer would be premature.

Mr. WOLL. Is the matter just Thomas?

Mr. HURLEY. We will temporarily withdraw those with reference to Thomas at this time.

The COURT. Very well. The others may be received.

(The documents so offered and received in evidence, marked "Government's Exhibits 36, 39, 40, and 43" are in the following words and figures, to wit:)

263 Mr. HURLEY. Cross-examine.

Mr. WARNHOLTZ. No cross-examination.

(No cross-examination. Witness excused.)

Mr. HURLEY. Mr. Andrew.

GARNETT ANDREWS, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. HURLEY:

Q. What is your name?

A. Garnett Andrews.

Q. Where do you live, Mr. Andrews?

A. I live in Chattanooga, Tennessee.

Q. During the year 1942 where did you live?

A. I lived in Jacksonville, Florida.

Q. What was your business or occupation in Jacksonville, Florida?

A. I was Manager of the Seminole Hotel.

Q. And where is that located in Jacksonville?

A. The corner of Forsyth and Hogan Streets, downtown Jacksonville.

Q. Were you engaged as manager during the entire month of June of the year 1942?

264 A. I was.

Q. As manager did you have the supervision and control of the records of that hotel?

A. I did.

Q. How far is that hotel from the Mayflower?

A. It is about a block and a half, two blocks.

Mr. HURLEY. May these be marked for identification?

(Said documents produced by counsel were marked for identification, "Government's Exhibits 44 to 45.")

Q. I show you "Government's Exhibit 44," marked for identification, and ask you if that is a part of the records of the Seminole Hotel of Jacksonville, Florida?

A. That is, yes.

Q. That is covering what?

A. That is a registration card.

Q. Was that the registration card of Edward D. Kelly, is that correct?

A. That is right.

Q. To what room was he assigned in the Seminole Hotel?

A. Room 402.

Q. That was on what date?

A. That was on June 16, 1942.

265 Q. I will show you Government's Exhibit——

A. Just a minute. May I look at this? Let me see this just a second. Mr. Hurley this question arose about this date on here. The card is dated June 16th but actually it was June 17th. This, of course, was checked not only by this card but also the other records of the hotel which I checked.

Q. Does that other record refer to the transcript sheet?

A. Yes, sir. And also evidence by our serial number on the card. It just so happened that the day that this party registered in the hotel we had a convention in the house and we were quite busy. It is possible that the clerk in his haste used the June 16th stamp instead of June 17th. You can understand that.

Q. In other words, they had entered the hotel——

A. June 17th.

Q. 1942?

A. That is correct.

Mr. HURLEY. Will you mark this for identification?

(The document produced by counsel was marked for identification, "Government's Exhibit 46.")

Q. Showing you Government's Exhibit 45, was that a part of the records of the Seminole Hotel?

266 A. Yes.

Q. That had to do with the same person, Edward D. Kelly?

A. Yes, sir.

Q. He registered on the 17th, is that correct?

A. Yes.

Q. And Government's Exhibit 45 covers what?

A. That is the transient ledger card. That is the transient ledger card on which the account of the guest is kept.

Q. That date is what?

A. 17th.

Q. 17th and 18th?

A. Checked out on the 19th.

Q. Showing that he entered there on the 17th, is that correct?

A. That is correct; yes, sir.

Q. Showing you Government's Exhibit 46 for identification, is that a part of the records of the Seminole Hotel?

A. Yes, it is.

Q. And what is that known as, Mr. Andrews?

A. That is known as the transcript.

Q. Were all of these records kept under your supervision?

A. Yes, sir; they were.

267 Q. And control?

A. Yes.

Q. Made in the usual and ordinary course of business, is that right?

A. Yes, sir.

Q. They are true and correct, except that on Government's Exhibit 44 for identification you say the date was June 17, 1942, is that correct?

A. Yes; that is correct, sir.

Q. How many persons occupied room 402, can you tell?

A. Yes. I will show you how you can tell that two people occupied room 402. Before the OPA we did not in the records, did not require people to register and the figure on the account card shows two people. That figure right there.

Q. You are referring to Government's Exhibit 45?

A. That is correct. That shows two people occupied the room.

Mr. HURLEY. Cross-examine.

Mr. WARNHOLTZ. No cross-examination, if your Honor, please.

(No cross-examination. Witness excused.)

Mr. HURLEY. You may step down. Mr. Thomas Williams.

268 THOMAS WILLIAMS, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. HURLEY:

Q. Will you state your name, please?
A. Thomas Williams.
Q. Where do you live?
A. Jacksonville, Florida.
Q. Where are you employed?
A. Seminole Hotel.
Q. How long have you been employed at the Seminole Hotel?
A. Quite a few years, seven or eight years, off and on, regular for the last four years, steady.
Q. You were employed there, were you not, during the month of June 1942?
A. Yes, sir.
Q. In what capacity are you employed at the hotel?
A. Bellman.
Q. Calling your attention to the 17th day of June 1942, did you have an occasion to go to room 402 about 12:30 on the afternoon of that day?
A. Yes, sir.

269 Q. What was the occasion for going to that room?
A. Well, to room some people that day.
Q. You roomed some people?
A. Yes, sir.
Q. What do you mean by that?
A. Roomed a couple of people, 402, about 12:30.
Q. You will have to speak up.
A. I roomed a couple of people around 12:30.
Q. By that do you mean you took up their baggage?
A. Yes, sir.
Q. That is what you mean by rooming them?
A. That is right.
Q. I will show you Government's 6 for identification and ask you if you have ever seen that person before?
A. Yes, sir.
Q. And when did you see him?
A. On June 17th.
Q. Speak up louder.
A. June 17, 1942.
Q. Where did you see him?
A. In the Hotel Seminole.
Q. Did you do anything in reference to that individual?
A. Yes, sir.

Q. What did you do?

270 A. I took some ice water up besides carrying the bags up.

Q. Carried bags to what room?

A. To 402.

Q. That is in the Seminole Hotel?

A. Yes, sir.

Q. I show you Government's Exhibit 5 in evidence and ask you if you have ever seen that person before?

A. Yes.

Q. Portrayed by that picture?

A. Yes, sir.

Q. Where did you see him?

A. In the Seminole Hotel.

Q. Was he with any one?

A. Yes, sir; with this gentleman right here.

Q. Referring to Government's Exhibit 6?

A. Yes, sir.

Q. What did you do with reference to that individual?

A. Taking both of them bags and carried some ice water up.

Q. Room 402, is that right?

A. 402.

Mr. HURLEY. Let the record show that the exhibits the witness is referring to are numbers 5 and 6 in evidence and are the photographs of Kerling and Neubauer. Cross-examine.

271 Mr. WARNHOLTZ. No cross-examination.

(No cross-examination. Witness excused.)

The COURT. We will take a short recess, ladies and gentlemen.

(A short recess taken.)

The COURT. Proceed, gentlemen.

CLIFFORD J. WEBB, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. FINN:

Q. Will you state your name, please?

A. My name is Clifford J. Webb.

Q. Where do you live?

A. I live in Jacksonville, Florida.

Q. What is your address?

A. My address is 1217 West Eighth Street.

Q. Where are you employed?

A. Employed in the United States Post office.

Q. Calling your attention to June 1942, were you employed at that time?

A. At the Seminole Hotel.

Q. In what capacity? What did you do for them?

272 A. I was a bell man and I rendered service for guests.

Q. Calling your attention to the 17th of June, or the 18th of June, were you called upon to perform any service at room 402 of the Seminole Hotel?

A. I was.

Q. Will you tell us what you did?

A. On June 17th, just about nine o'clock——

Q. We cannot hear you?

A. Around nine o'clock I was called to room 402. I carried in the—in other words, they notified the bell captain and he received that and then in turn they give you a slip. You are told on that slip what to do. They told me to carry some ice water to room 402.

Q. Did you go to room 402 on that occasion?

A. I did.

Q. Can you tell us who was in that room?

A. There were two gentlemen in that room.

Q. Did you have occasion to go to that room more than once on either that day or the next day?

A. I did.

Q. How many times did you go up there, do you remember?

273 A. I cannot recall the exact number of times, but it was more than once.

Q. I will show you Government's Exhibit 5 for identification and Government's Exhibit 6 for identification, and ask you if you can tell us who those are; whether you have ever seen those men?

A. These are the two men that were in the room at the time I rendered the service.

Q. That is room 402?

A. Room 402 of the Seminole Hotel.

Mr. FINN. Let the record show, if your Honor please, Government's Exhibit 5 for identification has been previously identified as Edward Kerling and Government's Exhibit 6 for identification has been previously identified as Hermann Neubauer.

The COURT. Let the record so show.

Mr. FINN. That is all with this witness. Cross-examine.

Mr. WARNHOLTZ. No cross-examination.

(No cross-examination. Witness executed.)

CLARENCE ALLEN, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

274 Direct examination by Mr. HURLEY:

Q. Will you please state your full name?
A. Clarence Allen.
Q. Clarence Allen?
A. That is right.
Q. Where do you live, Mr. Allen?
A. Jacksonville, Florida.
Q. What is your business or occupation?
A. I am with the Naval Air Station now.
Q. During the month of June 1942, what was your occupation?
A. I was manager of the Bay Jewelry Company at Jacksonville.
Q. Where is that located, the Bay Jewelry Company?
A. 25 West Bay, Jacksonville, Florida.
Q. 25 West Bay?
A. Yes.
Q. What was the nature of your employment?
A. Manager.
Q. You were manager of the Bay Jewelry Company on the 17th of June 1942, were you not?
A. Yes, sir.

Mr. HURLEY. Will you mark these for identification?

275 (The documents produced by counsel were marked for identification "Government's Exhibit 47, 48, and 49.")

Q. I show you Government's Exhibit 48 for identification and ask you if that is a part of the records of the Bay Jewelry Company?
A. Yes.
Q. Of Jacksonville, Florida?
A. Yes, sir; that is.
Q. Do you recognize the handwriting on that exhibit?
A. Yes.
Q. Whose handwriting is it?
A. Mrs. Blackwelder's.
Q. Who was Mrs. Blackwelder?
A. She was a sales clerk.
Q. She was employed as such clerk in the month of June 1942?
A. She was.
Q. I show you Government's Exhibit 49 for identification and ask you if that is a part of the records of the Bay Jewelry Company?
A. Yes, sir.

Q. Is that in the handwriting of Mrs. Blackwelder, too?

A. Yes, sir.

276 Q. I show you Government's Exhibit 47 for identification and ask you if that is a part of the records of the Bay Jewelry Company?

A. Yes, sir.

Q. Were all of the records, Government's Exhibits 47, 48, and 49 for identification kept under your supervision and direction as the manager of the Bay Jewelry Company?

A. Yes, sir, they were.

Q. And were they made in the usual and ordinary course of business of that company?

A. That is right.

Q. Are they true and correct? Is that right?

A. Yes, sir.

Q. Referring to Government's Exhibit 49, that shows the sale of a certain piece of merchandise from your store; is that correct?

A. Yes, sir.

Q. What type of merchandise was that?

A. That is a gentleman's wrist watch.

Q. A gentleman's wrist watch?

A. Yes, sir.

Q. Is there a number showing the number on the watch?

A. Yes, sir.

Q. And what was that number?

A. 16,334,893.

277 Q. That watch was, according to the records, sold to whom?

A. H. Haupt.

Q. 4444 North Western Avenue, Chicago, Illinois, is that correct?

A. That is right.

Mr. HURLEY. Will you mark this "Government's Exhibit 50"?

(The document produced by counsel was marked for identification as "Government's Exhibit 50.")

Q. I show you Government's Exhibit 50 for identification, which is the wrist watch, and ask you to examine it to see whether or not it contains the number shown on Government's Exhibit 49?

A. Yes, sir.

Q. Is that the same wrist watch of which Government's Exhibit 49 is the record of sale on?

A. Yes, sir, it is.

Q. As shown by the records of the Bay Jewelry Company?

A. That is right.

Mr. HURLEY. Cross-examine.

Mr. WARNHOLTZ. No cross-examination.

(No cross-examination. Witness excused.)

278 BARBARA KLUCZYK, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. FINN:

Q. State your name, please?

A. Barbara Kluczyk.

Q. Mrs. Kluczyk, you are going to have to speak distinctly and loudly, if you will, so we can all hear you.

A. Kluczyk.

Q. Where do you live, Mrs. Kluczyk?

A. 2234 North Fremont.

Q. I can hardly hear you. Will you speak louder?

A. 2234 North Fremont.

Q. North Fremont?

A. That is right.

Q. Do you and your husband own that building?

A. That is right.

Q. What side of the street is it on?

A. On the west side of the street.

Q. Of what is that building composed?

A. It is a brick building.

Q. How many apartments are there in that building?

279 A. Six apartments.

Q. Mrs. Kluczyk, are these six apartments all front apartments or are there some front apartments and some back apartments?

A. There are three front apartments and there are three rear apartments.

Q. There are three front and three rear?

A. Three rear; yes.

Q. You live on which floor?

A. On the first floor, front.

Q. I will call your attention to June of 1942; who lived in the apartment immediately above you?

A. Mr. and Mrs. Probst.

Q. Is that P-r-o-b-s-t?

A. Yes, sir.

Q. Did they live immediately above you?

A. Right in the apartment above.

Q. Above you?

A. Yes.

Q. Who lived in the apartment in June of 1942, the apartment immediately above the Probst?

A. Mr. and Mrs. Haupt.
Q. Do you mean Hans Haupt?
A. That is right.
Q. And Erna Haupt?
A. And Erna Haupt.
Q. Will you point out Mr. Haupt in the courtroom?
280 A. Right there.
Mr. FINN. Let the record show the witness has identified the defendant.
Q. How many entrances were there to that building?
A. Only two.
Q. Where were these entrances located?
A. One in front and one in back.
Q. Is it possible to go from the front apartment to the back apartment?
A. No.
Q. What apartments did the front entrance serve?
A. Only ours and the second and third floors.
Q. The Probsts and the Haupts?
A. The Haupts; that is right.
Q. In order to go from the Haupt apartment——
A. Have to pass Probst.
Q. To get out on the street it is necessary to come out of that front entrance; is that right?
A. Yes.
Q. And the same for the Probst apartment and your apartment?
A. That is right.
Q. The rear entrance, where is that located?
A. At the back porch.
Q. What apartments does that back porch serve?
281 A. All the three rear flats.
Q. Do you have a basement in your building?
A. Yes.
Q. How is it possible to get into the basement?
A. You can go through our flat into the basement.
The COURT. Go through what?
A. Through our flat, into the basement.
Q. Go through your flat to go into the basement?
A. Yes.

By Mr. FINN:

Q. In other words, if the people in the Probst Apartment wanted to go to the basement they would have to go through your apartment; is that correct?
A. No; they had to go around to the rear.
Q. Or through your apartment?

A. We do not have anybody—never leave anybody around in the front.

Q. They have to go through your apartment?

A. Yes.

Q. Or they would have to come out of the front entrance and then go around to the rear entrance which goes down into the basement?

A. That is right.

Q. Is that correct?

A. That is correct; yes.

282 Q. You say you never allow the other tenants to go into the basement through your apartment?

A. No.

Q. You just use that yourself; is that correct?

A. Yes.

Q. How long had you known Hans and Erna Haupt prior to June 1942?

A. Twelve years.

Q. Where did you first meet them?

A. Maywood, at a birthday party.

Q. I did not hear that.

A. In Maywood, on a birthday party.

Q. Did you keep up your acquaintanceship with them through all the years?

A. Well, first couple of years we were pretty good friends. Later on we parted away again.

Q. Did Hans and Erna Haupt later move into your apartment building?

A. That is right.

Q. Did any one move with them?

A. Their son, Herbert.

Q. What is it?

A. Their son, Herbert.

Q. When was it that Hans and Erna and Herbert Haupt moved into the third floor of your three-apartment—third floor front of your building?

283 A. It was in May 1941.

Q. I will show you Government's Exhibit 3 for identification and ask you if you recognize that photograph?

A. Yes. That is Herbert Haupt.

Q. Did Herbert Haupt remain with Hans and Erna Haupt, or did he go away?

A. Herbert Haupt left the middle of June 1941.

Q. In other words that would be approximately six weeks after they moved in. Is that correct?

A. Yes.

Q. Were you present on the day when Herbert Haupt left?

A. Yes, sir.
Q. Do you know who left with him?
A. Two other boys.
Q. Do you know who either of those two other boys were?
A. Well, one I know, by the name of Wolf.
Q. The other one you did not know.
A. With the other two.
Q. Wolf?
A. Yes.
Q. Do you know his full name?
A. Wolfgang Wergin.

284 Mr. WARNHOLTZ. I believe I shall object to this, your Honor. I believe the witness should state what she saw. What she heard is a conclusion, that she knew this, that they left.
The COURT. Well, tell us what she saw.
Mr. FINN. Tell us what you saw that day; on that day.
Mr. WARNHOLTZ. What day?
The WITNESS. Well, they were going away.

By Mr. FINN.

Q. Just tell what you saw that day? Did they get into the automobile?
A. They came out with suitcases and drove away with the automobile.
Q. How many of them drove in the automobile?
A. Three of them.
Q. Who were those three?
A. Herbert Haupt, Wolfgang Wergin and the other boy, I do not know his name.
Q. You did not see them after that for a long time, is that correct?
A. That is right.
Q. Some time after they had left, did you see a telegram from the boys?
A. I seen one from Herbert.
Q. From Herbert?
A. Yes.

Mr. FINN. May this be marked "Government's Exhibit
285 51" for identification?

(The document produced by counsel was marked for identification, "Government's Exhibit 51.")

Q. Do you remember what that telegram said, Mrs. Kluczyk?
A. I do not remember what was in there but it was from Tokio, I know that.
Q. From where?
A. Tokio.
The COURT. When did the boy go away?

The WITNESS. 1941.

Mr. FINN. I believe she said the middle of June 1941.

Q. I will show you a document marked "Government's Exhibit 51" for identification and ask you if you can tell us whether that is the cablegram or telegram that you saw?

A. That is the one.

The COURT. What did you say, Madam?

A. That is the one.

By Mr. FINN:

Q. Who showed you this telegram?

A. Mrs. Haupt.

Q. Calling your attention to the 7th day of December 1941, Pearl Harbor Day, did you have a conversation with either Mr. or Mrs. Haupt, or with Mrs. Haupt when Mr. Haupt was
286 there in the house, that evening?

Mr. BERTRAM. I object to the question, your Honor. It is a double form of question.

The COURT. Well, she may answer yes or no.

Mr. BERTRAM. It might call for one answer that might be incompetent, he called first for an answer——

Mr. FINN. Pardon me, I will reframe the question, counsel.

Q. Calling your attention to the 7th day of December 1941, did you have a conversation that evening, either with Mr. Haupt or with Mrs. Haupt in the presence of Hans Haupt in your house?

A. Yes.

Q. With whom did you have this conversation?

A. With Mrs. Haupt.

Q. And was Hans Haupt there at the time?

A. I am not quite sure but I think he was there.

Q. All right, will you tell us what was said on that occasion?

Mr. WARNHOLTZ. That is objected to, your Honor.

Mr. FINN. In this conversation.

Mr. WARNHOLTZ. The previous answer was she does not
287 know whether or not this defendant was present at the time of the conversation.

The COURT. What is your best recollection, Madam?

A. I think he was there.

The COURT. She thinks he was there. Proceed.

By Mr. FINN:

Q. Will you tell us what she said on that occasion?

A. They were sending a telegram that afternoon to their boy to Japan.

Q. What else did she say, if you recollect?

A. That she told us those boys had birthdays, Herbert and this Wolfgang, the same month, the same year.

Q. I cannot hear. Who did she say she was sending the telegram or cablegram to?
A. To Herbert and Wolfgang Weigin.
Q. Where did she say she was sending it to?
A. To Tokio.
Q. Tell us what she said further.
A. She sent them happy birthday, merry Christmas, and happy New Years.
Q. What time was it that this conversation took place?
A. It was late in the evening.
Q. Calling your attention to Friday, June 19, 1942, which
288 is approximately a year after the boys had left, Friday, June 19, 1942, in the afternoon, did anyone come into your home?
A. Yes; Mr. and Mrs. Haupt.
Q. Did you have a conversation with her at that time?
A. Yes, sir, we did.
Q. After this conversation what happened?
A. Well, she left.
Q. And what did you do there after she had left?
A. Well, I done my work.
Q. Well, did you deliver a message to anyone?
A. Yes; to Mr. Haupt.
Q. What time did Mr. Haupt come in?
A. Oh, it must have been about seven o'clock in the evening.
Q. Did anyone come with him?
A. Yes.
Q. Who came with him?
A. His helper.
Mr. WARNHOLTZ. Who?
Mr. FINN. His helper. That is Mr. Tobsing.
Q. Do you know whether he is now living or not?
A. I seen him once here in the courthouse.
Q. Not recently?
A. No.
Mr. FINN. We will prove the man died some time ago,
289 your Honor; fell off a roof. Can we agree to that, Mr. Warnholtz?
Mr. WARNHOLTZ. Agree that he is is dead?
Mr. FINN. Yes.
Mr. WARNHOLZ. Yes.

By Mr. FINN:

Q. Did you say that Hans Haupt and his helper came in about seven o'clock?
A. That is right.

Q. Between the time that Mrs. Haupt had left and Hans Haupt came in, had you received any telephone calls from Mrs. Haupt?

Mr. WARNHOLTZ. That is objected to, your Honor. This took place between Mrs. Haupt and Mrs. Kluczyk, part of a conversation to which Mr. Haupt is not a party.

The COURT. Overruled.

Mr. FINN. The answer was yes.

Q. You had received how many messages?

A. Two.

Q. When you delivered this message to Mr. Haupt, what did he do?

A. Well, he went in the house.

Q. Did he leave?

A. I did not see him go away.

Q. What conversation did you have with Mr. Haupt?

290 A. Just told him his wife called twice and he was to go down to the sister-in-law; something happened to his sister-in-law.

Q. Something happened to his sister-in-law?

A. Yes.

Q. What did he say?

A. Well, "I have to go then." That is all that he said.

Q. Did you mention the name of the sister-in-law at the time to Mr. Haupt?

A. Well, I think something happened to Lucille, Lucille something.

Q. Lucille?

A. Yes.

Q. Lucille who?

A. Froehling.

Q. And he said "I have got to go?"

A. Yes.

Q. Did you see Herbert Haupt around the house that night later on?

A. No.

Q. Did you see him at any time on Saturday around the house?

A. No.

Q. When was the first time thereafter that you saw Herbert Haupt around your house?

A. It was Monday, around eleven o'clock.

291 MR. WARNHOLTZ. When?

A. Monday, around eleven o'clock.

By Mr. FINN:

Q. Would that be June 22, 1942?

A. Yes.

vere you at the time when you first noticed him?
t to see if the mailman was in.
as that?
l to get my mail from the mail box.
t you saw.
erbert and his mother standing out on the sidewalk.
What was that?
Haupt, with his mother, standing out on the side-

go out and talk to them, there?
pened the door and I asked Herbert, "Well, where
from?"
M. I object to the conversation.
Sustained.
FINN:
have a conversation with him. Do not say what
ou did have a conversation with him?
nly that what I said, yes.
ll right. When was the next time you saw Herbert

evening.
e evening, was it?
evening. June 22, 1942.
d you see him on that occasion?
partment.
present in your apartment on that day?
and and Mr. Wittrock.
?

with him?
Mrs. Haupt.
here you were sitting at the time they came in?
were sitting in the parlor.
ean your husband, Mr. Wittrock and yourself?

erence to the parlor, where is this parlor located,
f the house?
front of our house.
ell us, was your door open or was it closed?
rang the bell and I let them in.
rang the bell?

here does the door of your house open, into the
ll, to our apartment.

Q. Does the door enter right into your living room?
A. No; just a little hallway first.
Q. And when you opened the door who was there?
A. Mr. and Mrs. Haupt and Herbert.
Q. Did you have a conversation with them on that occasion?
A. Not yet. I did not talk to them.
Q. Just tell us what was said, who talked and what was said there? This was had in the presence of Mr. Haupt?
A. Yes.
Q. Just tell us what was said.
A. All three, the three came in and my husband said to Herbert where you have been all the time and Herbert then said, "In Mexico, South America and all over."
Q. What was further said?
A. Mrs. Haupt said they have to go right away, have to see a friend. That is all what was mentioned.
Q. Did she say anything about whether they had to go immediately, or whether they had a lot of time?
A. They said they was in a hurry.

Mr. BERTRAM. I object to that. That is leading.

294 The COURT. Read the question.

(Question read.)

By Mr. FINN:

Q. How long did they stay in your apartment on that occasion?
A. Only a couple of minutes.
Q. And then what did they do?
A. They drove away in Mr. Haupt's car.
Q. Where was the car parked?
A. In front of our house.
Q. Did you see them go from your entrance over to the car?
A. Yes, sir.
Q. All three in that car?
A. That is correct.
Q. Now, later on during that week did you see Herbert Haupt around the house there?
A. Only a couple of times.
Q. When was the next time? You have described seeing him on Monday morning and Monday evening. When was the next time after that that you recall seeing him?
A. I saw him go away once with a taxi.
Q. When was that, as you recall?
A. I cannot prove that, whether it was Tuesday or Wednesday.

295 The COURT. Went away with what?

A. With taxi, went away.

By Mr. FINN:

Q. Was it either Tuesday or Wednesday?

A. Yes.

Q. About what time of day was it, Mrs. Kluczyk, as best you remember?

A. I could not tell that, either.

Q. Was it early morning, noon, nighttime or as you best recollect?

A. I do not know.

Q. Was he alone at that time or was someone with him?

A. He was alone.

Q. Where did the taxi come from?

A. I think from the north side of the street because it went south.

Q. What did you see Herbert Haupt do?

A. Just go in the taxi and then drive away.

Q. After that did you see him on any other occasion during that week?

A. Yes. It was on Wednesday noon.

The COURT. What?

The WITNESS. Wednesday noon, around eleven or twelve.

By Mr. FINN:

Q. Wednesday what?

A. Noon, around eleven or twelve, around that time.

296 Q. Where were you at that time?

A. In our apartment.

Q. Were you in the kitchen, the front room or the dining room?

A. In the front room.

Q. Just tell us what you saw him do? Was he alone or with somebody at that time?

A. With his mother, Mrs. Haupt.

Q. Just tell us what you saw him do?

A. They were walking south.

Q. What is that?

A. Walking south on Fremont Street towards Webster Avenue.

Mr. WOLL. South on what?

Mr. WARNHOLTZ. Let the reporter read the answer.

(Answer read.)

By Mr. FINN:

Q. When you say them, who do you mean?

A. Mrs. Haupt and Herbert.

Q. You believe it was about twelve o'clock on Wednesday is that right, or Wednesday noon?

A. Yes.

Q. How far from the front of your apartment building were they when you noticed them, or did you see them come out of the building?

297 A. No; I did not see them coming out.

Q. How far were they from the building when you first noticed them?

A. I think they were a house away then.

Q. A house away?

A. Yes.

Q. In which direction?

A. Going south on Fremont, I said.

Q. Do you mean south of your building?

A. Yes, sir.

Q. In the front of your building?

A. Yes, sir.

Q. Did you see them later on that week?

A. No.

Q. Do you recollect what type of cab that was you saw Herbert enter?

A. Cab?

Q. Cab, taxicab?

A. Yellow.

Q. Yellow?

A. Yes.

Q. Going back to the evening of December 7, 1941, when you related that this conversation took place about the cablegram that they were sending to the boys in Japan, do you recall anything further that was said about the possibility of receiving that cablegram?

Mr. BERTRAM. I object to that, any leading questions

298 of her.

Mr. FINN. May I lay a foundation for this first?

The COURT. Yes.

By Mr. FINN:

Q. Do you recall anything else that was said on that occasion, December 7th, the evening of December 7th, 1941, about a cablegram?

A. Well, Mrs. Haupt, she was a little worried, maybe it would not reach him.

Q. What is that?

A. Mrs. Haupt was worried about the telegram, about the telegram.

Q. Did she say she was worried about the telegram?

A. Yes; she thought maybe he won't get it any more.

Q. Why?

A. Because the war started that day.

The Court. We will recess at this time, ladies and gentlemen, until two o'clock.

Do not discuss the case nor permit any one to discuss it with you, do not discuss it amongst yourselves.

Do not discuss this case, Madam, between now and two o'clock.

A. No.

(Whereupon an adjournment was taken to two o'clock P. M. of the same day Friday, May 26, 1944.)

299 In the District Court of the United States for the Northern District of Illinois, Eastern Division, at Chicago

UNITED STATES OF AMERICA

vs.

HANS MAX HAUPT

Before Hon. JOHN P. BARNES, Judge, and a Jury

Friday, May 26, 1944, 2:00 o'clock P. M.

Court met pursuant to recess.

Counsel present: Mr. J. Albert Woll, United States District Attorney for the Northen District of Illinois, Eastern Division, at Chicago, and Mr. Earle C. Hurley, and Mr. Richard G. Finn, Assistant United States District Attorneys for the Northern District of Illinois, Eastern Division, at Chicago, appeared for the United States of America; Messrs. Paul A. F. Warnholtz, Frederick J. Bertram, appeared for the Defendant.

* * * * *

300 (Thereupon the following proceedings were had in the courtroom outside the presence and hearing of the jury:)

Mr. WARNHOLTZ. I would like the record to show at this time, by inquiring of the United States Attorney if he has any other purpose for this particular testimony given by this witness, if it is for the purpose of proving the overt act or for the purpose of proving the enemy status of Herbert Haupt.

Mr. FINN. No; it is for the purpose of showing the overt act.

Mr. WARNHOLTZ. Overt act; in that case, then I will ask that all testimony given by Mrs. Kluczyk, relating to June 22, 1942, when she saw Herbert standing on the sidewalk in front of the building where she lived, the testimony relating to Tuesday or Wednesday, June the 23rd or 24th, 1942, when she saw Herbert leave alone in a Yellow Taxicab in front of her building, and the testimony relating to Wednesday, June 24, 1942, when she saw Herbert Haupt and his mother walk south on Fremont Street, be stricken, because it is irrelevant to the issues; it is irrelevant

and immaterial as far as Hans Haupt is concerned. It tends to confuse the jury, because the jury may think there were two
301 witnesses and also *also* because Hans Haupt was not present on any of these occasions. I will also ask that all testimony of Mrs. Kluczyk be stricken, which refers to her showing a cablegram, by Mrs. Haupt, of a cablegram to Mrs. Kluczyk, because it has been not shown that Hans Haupt was present, or that the cablegram was from Tokio.

Mr. FINN. We haven't introduced the cablegram.

Mr. WARNHOLTZ. Her testimony also should be stricken.

The COURT. Overruled. Bring in the jury.

Mr. WARNHOLTZ. Just a minute. Mr. Finn and Mr. Hurley, I will ask that Mr. Connelley be excluded from the courtroom. The witness, Mr. Connelley, knows what his presence and reason is here.

The COURT. I don't think Mr. Connelley will do any harm. Bring in the jury.

(Thereupon the following proceedings were had in the courtroom in the presence and hearing of the jury:)

302 BARBARA KLUCZYK, resumed the stand for further examination, after having been previously sworn, was examined and testified as follows:

Direct examination by Mr. FINN:

Q. Mrs. Kluczyk, just before or shortly before Herbert Haupt left in June of 1941, or at about that time, did you have a conversation with Mr. Haupt relating to where Herbert Haupt was going, or where he wanted to go?

A. Well, they only told us he was going to Mexico.

Mr. BERTRAM. I move that the answer be stricken as not responsive.

The COURT. Motion denied.

Mr. FINN. After he had left, did you have any conversation with Hans Haupt, or shortly after he had left, on the subject where he was going, or where he would like to go?

Mr. BERTRAM. Object to that as leading.

The COURT. Sustained.

Mr. BERTRAM. At about the time when he left or before or after.

Mr. FINN. Did you have a conversation with Hans Haupt,
303 not with Mrs. Haupt, with Hans Haupt, or do you recall a conversation with Hans Haupt about where the boy wanted to go?

Mr. BERTRAM. Same objection, if the court please.

The COURT. The question is leading.

By Mr. FINN:

Q. Do you recall a conversation with Hans Haupt on any subject about that time?

A. Well, he told us the boy was going to Germany.

Mr. FINN. That is all.

Cross-examination by Mr. WARNHOLTZ:

Q. Mrs. Kluczyk, you stated that Hans Haupt and his wife, Erna Haupt, and their son, Herbert Haupt, moved into the apartment 2234 Fremont Street about May 1941, is that correct?

A. That is correct.

Q. Do you know where they had lived before they came over there?

A. Well, they lived in Maywood at that time for a couple of weeks.

Q. Within a few weeks prior to that, they lived in Maywood?

A. Before they come to us.

Q. Before they moved over to your place?

A. That is right.

Q. Do you know whether or not at any time they lived
304 on Western Avenue, 4444?

A. They were. I don't know which or where they lived now. I know they lived at that address at some time.

Q. Mrs. Kluczyk, but you do not know the time; is that right?

A. That is right.

Q. And all these three boys were leaving in an automobile from the Haupt home, is that right?

A. That is right.

Q. About June, the middle of June 1941?

A. Yes.

Q. And these three boys you knew, and Herbert Haupt?

A. Yes.

Q. You knew Wolfgang Wergin?

A. Yes.

Q. How well did you know Wolfgang?

A. I didn't know him very well. I only knew him through Haupt.

Q. Well, how far, or how often, rather, had you seen him?

A. Only a couple of times.

Q. Did you know his father and his mother?

A. No.

Q. The first boy you do not know at all?

A. No.

305 Q. When these three boys left, what time was it in the morning, if you remember?

A. It was before noon.

Q. Before noon?

A. I couldn't tell you the exact time.

Mr. FINN. Pardon me. Keep your voice up, please.

By Mr. WARNHOLTZ:

Q. Mrs. Kluczyk, did you at that time notice Mr. or Mrs. Haupt; were they out on the sidewalk saying good-bye to the boys, or something like that?

A. Only Mrs. Haupt.

Q. Only Mrs. Haupt?

A. Yes.

Q. Were you out on the sidewalk, too?

A. No; I was inside, in the hall.

Q. You were inside in the hall; could you hear or see what Mrs. Haupt said to these boys, if anything?

A. No.

Q. Did you notice her attitude, was she laughing or crying, or what?

A. She was crying.

Q. She was crying at the time?

A. Yes, sir.

Mr. WARNHOLTZ. Thank you. That is all.

Mr. FINN. That is all. Just a moment, please, Mrs. Kluczyk. Just sit up there again, please.

306 Your Honor, I would like to have leave to ask a direct question, and that is one that should have been done on direct examination, one I neglected to ask at that time.

The COURT. Very well.

Direct examination (resumed) by Mr. FINN:

Q. Mrs. Kluczyk, have you recalled all of the conversation that you remember between yourself and Hans Haupt at about the time when the boy left? Do you recall anything else that was said on that occasion?

Mr. BERTRAM. Objection, unless this is just a yes or no answer.

The WITNESS. I don't know what you mean.

Mr. FINN. Well, do you recall anything else that was said on that occasion at the conversation to which you testified just a moment ago between yourself and Hans Haupt about the boy?

Mr. WARNHOLTZ. What date, Mr. Finn, please?

Mr. FINN. Just at about the time he left.

Mr. BERTRAM. With Mrs. Haupt.

Mr. FINN. With Mr. Haupt.

Q. Do you recall anything else that was said by the witness?

A. I don't know.

The COURT. What?

307 The WITNESS. I don't know what Mr. Finn means.

The COURT. He doesn't know what you mean.

By Mr. FINN:

Q. You testified at the last trial of this case, did you not?

A. Yes.

Q. For the purpose of refreshing your memory——

Mr. BERTRAM. Just a moment, Mr. Finn. The witness said she didn't understand your question. She has not said she doesn't know the answer. If you put your question properly——

Mr. FINN. Do you recall anything else that was said by Hans Haupt on the occasion on which you spoke to him about where his boy was going, just before he left, when he told you he was going to Germany, or he wanted to go to Germany?

The COURT. Overruled.

A. No; he always told us he wanted to go to Mexico.

Mr. BERTRAM. I move that Mr. Finn's remark or statement in his question be stricken, because it is incorrect. The witness has just now told you so.

The COURT. Let it stand.

Mr. FINN. The question is this: Do you recall anything else that was said by Mr. Hans Haupt on the occasion of your conversation that you had with him which you related before,
308 when he said that his boy wanted to go back to Germany.

Mr. BERTRAM. I will object to the leading part of the question, the last few words.

The COURT. Overruled. Why do you object? Isn't that the testimony?

Mr. BERTRAM. No; the question should be put, I think: Does she recall any other conversation, at that time and place.

The COURT. Yes. But he has to fix the time and place for the testimony, or we won't be through here all afternoon.

Mr. FINN. Read the last question.

(Last preceding question read by the reporter.)

Mr. WAENHOLTZ. Objected to as an incorrect statement. This witness never stated that Hans Haupt said his boy wanted to go back to Germany.

Mr. FINN. That is what I understood the testimony to be.

The COURT. That is what I understood the testimony to be.

By Mr. FINN:

Q. Do you recall anything else that was said on that occasion by Mr. Haupt?

A. Mr. Finn, we only know——

Q. The question is: Do you recall anything else that was said at that time on that occasion?

309 A. I don't remember, Mr. Finn.

Q. You testified at the last trial?

A. Maybe I did, but I don't remember, Mr. Finn.

Q. No; I mean you did testify as a witness at the last trial, did you not?

A. Yes; I did.

Q. Do you recall this question, these questions and answers.

Mr. BERTRAM. May I have the page first?

Mr. FINN. Page 386.

"Question: Have you related, have you told all of the conversations with either of the Haupts, either Hans or Erna, on the subject of the boys being back to Germany, that you can remember at this time; have you told us everything about such a conversation?

"Answer: Well, I think so.

"Question: For the purpose of refreshing your memory, did Hans Haupt at any time tell you that his son liked Germany better than the United States and wanted to go back and fight for the Germans?

"Answer: I think he said that.

"Question: When did he say that, if you remember?

310 "Answer: Well, I think he had gone already; Herbert had gone, after Herbert had left."

By Mr. FINN:

Q. Do you recollect those questions being asked you and those answers made at the last trial?

A. Yes; I remember.

Q. Does that refresh your recollection as to that conversation?

A. Well, I don't remember.

Q. What is it?

A. I don't remember, but I know I testified to that.

Q. Was that correct at the time?

A. Yes.

Mr. FINN. That is all.

Mr. WARNHOLTZ. Mrs. Kluczyk, just a moment, kindly.

Re-cross-examination by Mr. WARNHOLTZ:

Q. On or about the time when Herbert Haupt left about the middle of June 1941, he left Chicago, did Mr. Haupt, Hans Haupt, tell you his boy was going to Germany?

A. No; they only told us he was going to Mexico.

Mr. WARNHOLTZ. That is all. Thank you.

Mr. FINN. Just a moment.

Redirect examination by Mr. FINN:

Q. What did he tell you where he wanted to go?

311 Mr. BERTRAM. Wait a minute. That has been gone over by Mr. Finn several times.

Mr. WARNHOLTZ. When, where, who was present?

Mr. FINN. She said they only said they wanted to go to Germany.

Mr. BERTRAM. Still this question is improper.
The COURT. She may answer.
Mr. FINN. Read the question.
(Last preceding question read by the reporter.)
The WITNESS. Well, Mr. Haupt told us he wanted to go to Mexico, that is all we understood, but he told us later on when he told us the boy wanted to go to Germany.

By Mr. FINN:

Q. When was it he told you the boy wanted to go to Germany, as best you recall?
A. He was gone quite a while already.
Mr. BERTRAM. Objection.

By Mr. FINN:

Q. How long, approximately?
A. I couldn't say that.
Q. Well, was it one month or two months, your best judgment, Mr. Kluczyk?
A. I couldn't say when it was.
Mr. FINN. That is all.
Mr. WARNHOLTZ. Just a moment, please. Thank you. That is all.
312 Mr. FINN. That is all, Mr. Kluczyk.

STANLEY KLUCZYK, called as a witness by the Government, after having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. FINN:

Q. Will you state your name, please?
A. Stanley Kluczyk.
Q. That is nice and loud so that we can all hear you.
A. That is right.
Q. Where do you live, Mr. Kluczyk?
A. 2234 Fremont Street.
Q. How long have you lived at that address?
A. Since 1941.
Q. You are the owner of that building, I take it?
A. Yes, sir.
Q. Will you describe the building to the Jury as to how many apartments there are, and how those apartments are located?
A. Six apartments in that building; there are three flats in the front and three flats in the rear.
Q. As the building was constituted in 1942, in June, was
313 there any way of getting through the building from the front to the rear without going outside and around?

A. It was partitioned off, the stairs were partitioned off, and you could only go one way up and one way down, on each, in the rear and in the front.

Q. In other words, if a person wanted to go to the third apartment, to the one above, to get out of the building, he would have to go out the front entrance, is that correct?

A. Right.

Q. Now, who lived in June 1942, who lived in the apartment immediately above you?

A. Mr. Probst.

Q. And his wife?

A. And his wife.

Q. And who lived in the apartment above the Probsts?

A. The family of Hans Haupt.

Q. Is that Hans Haupt?

A. Hans, Erna, and Herbert Haupt.

Q. How long had you known the Haupts before June 1942?

A. Twelve years.

Q. I take it, from what Mrs. Kluczyk said, that for some period of years you had known them, then your acquaintanceship dropped off, then they moved into your building, is that correct; to shorten it up?

A. Yes, sir.

314 Q. When did they move into your building?

A. In 1941.

Q. And in what month?

A. In May.

Q. Who moved in with them?

A. Mr. Haupt with the Haupt family?

Q. Yes.

A. Herbert Haupt.

Q. How long did Herbert Haupt remain with the Haupts before he left for Mexico?

A. Herbert remained until the middle of June.

Q. And were you present at the time he left?

A. I was present.

Q. Do you recall who went with him at that time?

A. Two boys went with Herbert Haupt.

Q. Do you know who those boys were?

A. I know one boy, which was Wolfgang Wergin.

Q. There was another boy?

A. Yes, sir.

Q. When did they leave?

A. How?

Q. How did they leave?

A. They left in the car; by car.

Q. Sometime after that did you see a telegram which they had received from Herbert?

A. Yes, I did.

Q. Showing you Government's Exhibit 51 for identification, can you tell us whether that is or is not the
315 telegram in question?

A. Yes, it is.

Mr. WARNHOLTZ. Just a moment, kindly. I move that that question be stricken as asked by Mr. Finn, a telegram which they received. I think it should be definitely shown who receives a telegram. There is a Mr. and Mrs., which constitutes them, and it might be confusing.

Mr. FINN. I think the telegram record in the office of the Telegraph Company shows it was directed to Haupt at that address, and it was delivered to that address to H. Haupt.

The COURT. When he saw the telegram.

By Mr. FINN:

Q. Do you recollect when it was you saw this telegram, Mr. Kluczyk?

A. I can't tell you exactly the dates; I don't remember very well when.

Q. Do you know who was present when you saw it there?

A. I think my wife was present.

Q. Well, who else?

A. Nobody else; and Mrs. Haupt.

Q. And Mrs. Haupt?

A. Yes, sir.

Q. By the way, could anyone coming from over the front of the building, get into any of the back apartments except by going around to the rear entrance?

A. Repeat that, please.

316 Q. Could anyone coming from the street or from the sidewalk in the front of this building get into any of the rear apartments except by going around to the rear entrance?

A. No.

Q. Now, calling your attention to the 22nd day of June 1942, in the evening, were you home?

A. I was home.

Q. Who was present in your home at that time?

A. My wife and Fred Wittrock.

Q. About what time was this?

A. Between six and seven.

Q. Where were you sitting?

A. I was sitting on a couch.

Q. In what room?

A. Front room.

Q. Will you describe to us just what happened on that occasion?

A. Mr. Haupt and Mrs. Haupt and Herbert Haupt came in to me and said, "Hello."

Q. Where did they come from and what was the first you knew they were there; was your door open or closed at that time before you saw them?

A. We had to open the door first.

Q. Well, was there a knock or a ring, or how did you know they were there?

317 A. I don't know. I didn't let them in. I think my wife did. I don't know.

Q. Where were they when you first saw them?

A. In the front room.

Q. And were they together, Hans and Erna and Herbert?

A. Together, standing.

Q. Will you tell us first what conversation took place there when Hans Haupt was present?

A. I said, "Hello." Then I asked Herbert Haupt where he was. He said to me, he went to Mexico and South America, and all over.

Q. What else took place, what else was said?

A. And then Mrs. Haupt said, "We don't have very much time; we want to see a friend." And it was a matter of minutes and they left.

Q. And I take it there was no further conversation there on that occasion?

A. No.

Q. Did you see where they went?

A. I saw them leaving by their own car.

Q. Now, in order to get out of your apartment to the car, is there a front entrance there?

A. Yes.

Q. Now, where was the car parked?

A. In front of the house.

318 Q. You say that was an old car?

A. No; I think it was a Plymouth car. It was a newer car then.

Q. Now, did you later on, on any other occasion, during that week, see Herbert Haupt?

A. I saw Herbert Haupt leaving by taxicab once or twice.

Q. Do you recall when it was?

Mr. BERTRAM. We want to object on the same ground as we objected before, if your Honor please.

The COURT. Overruled.

By Mr. FINN:

Q. Do you recall when it was that you saw Herbert Haupt leaving by taxicab?

A. I don't know exactly. I don't know whether it was Wednesday, Tuesday, or Thursday. I don't know.

Q. Do you recall what kind of a cab it was?

A. What kind?

Q. Yes.

A. No.

Q. I take it, you knew Herbert Haupt before he left this country, is that correct?

A. Yes.

Q. I will show you Government's Exhibit No. 3 for identification, and ask you if you can tell us who that is?

A. That is Herbert Haupt.

319 Q. Will you point out Hans Haupt in the courtroom?

A. Over there [indicating].

Mr. FINN. Let the record show the witness has indicated the defendant by pointing him out.

Q. Your home at 2234 Fremont Street is in the city of Chicago, is it not?

A. Yes.

Mr. FINN. That is all. You may cross-examine.

Cross-examination by Mr. WARNHOLTZ:

Q. Mr. Kluczyk, how old was Herbert Haupt when you first met him?

A. When I first met him?

Q. Yes.

A. Well, he was in the schooldays then.

Q. How old was he about when he left Chicago in 1941?

A. When he left Chicago?

Q. Yes.

A. Between twenty and twenty-two, that is all, I think. I don't know.

Q. Do you know if these three boys left in Herbert Haupt's car, or in whose automobile?

A. No; they left not in Haupt's car.

Q. Do you know whether or not Herbert Haupt owned a car at that time?

A. Herbert Haupt didn't own a car, I guess.

Q. At the time he left?

320 A. Whether he owned that car in which he left?

Mr. FINN. I think he answered the question, your Honor.

The COURT. I don't think their minds are meeting.

By Mr. WARNHOLTZ:

Q. At the time he left, did he then own a car, an automobile?
A. Yes, he still owned a car, as far as I know.
Q. I should ask whether he did or did not, state, if you know.
A. I don't know on paper, but he owned a car then.
Q. Do you know what type it was?
A. A Plymouth.
Q. A Plymouth car?
A. Yes.
Q. But that was not the car in which these three boys left, was it?
A. No.
Q. This particular telegram or cablegram which Mrs. Haupt showed you and Mrs. Kluczyk came from Tokio?
A. Right.
Q. And when she showed it to you was Hans Haupt present?
A. I can't remember. As far as I know, only Mrs. Haupt told me, she showed me this telegram.

321 Q. Do you have a better recollection as to that when you testified in this case about one year and a half or two years ago?

A. Say that again, please.
Q. Did you perhaps remember a little better when you testified about two years ago in this case; did you have a better recollection then?
A. Well, I don't know exactly.
Q. At that time Mr. Finn asked you a question, at the time when Mrs. Haupt showed you this telegram, cablegram, was Hans Haupt present also, and your answer was "No." Was that answer true at the time you made it, when you stated that here about two years ago?
A. I don't know.
Q. You don't know if it was true?
A. Because I am getting all mixed up. Mrs. Haupt always came to my apartment and talked to me.

Mr. FINN. Your Honor, I don't quite see the purport of this cross-examination, in view of Mr. Warnholtz's statement, his opening statement, to the effect they did receive such a telegram.

The COURT. Well, I don't think I will limit it.

By Mr. WARNHOLTZ:

Q. At the time when you saw Herbert Haupt leave in a taxicab in front of or near your particular building, was Hans Haupt there, did you see him at the same time?

322 A. On Monday he left?

Q. No; at the time when Herbert Haupt left in a taxicab, Herbert Haupt had left, was his father there, too?

A. No; he left alone.
Q. And his father was nowhere around, was he?
A. No.
Mr. WARNHOLTZ. That is all. Thank you.
Mr. FINN. That is all, Mr. Kluczyk.

Redirect examination by Mr. FINN:

Q. By the way, do you recall of having had a conversation with Hans Haupt about this cablegram?
Mr. BERTRAM. That is not redirect examination; proper redirect examination.
Mr. FINN. Oh, I think it is in view of the cross-examination.
The COURT. Well, I will let him answer. If it isn't proper redirect examination, it may be now considered as part of the direct examination.

By Mr. FINN:

Q. Do you recall ever having had a conversation with Hans Haupt about this cablegram at any time?
A. I am not sure, but I think we had.
Mr. FINN. All right. I think that is all.
Mr. WARNHOLTZ. That is all.

323 ARTHUR JOHN PROBST, called as a witness by the Government, after having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. HURLEY:

Q. Will you state your name?
A. Arthur John Probst.
Q. How do you spell your last name?
A. P-r-o-b-s-t.
Q. Where do you live?
A. 1443 North Hudson Avenue.
Q. How long have you lived at that address?
A. Since October 1943.
Q. Before your living at 1443 North Hudson Avenue, where did you live?
A. 2234 North Fremont Street.
Q. When did you go to the apartment at 2234 North Fremont Street?
A. 1940, in October.
Q. And did you live there in October 1943, is that correct?
A. That is right.
Q. And what apartment did you occupy at that address?
A. Second floor, front.
Q. Do you know who was living on the first floor?

A. Kluczyk?

324 Q. Mr. and Mrs. Kluczyk?

A. That is right.

Q. Who lived on the third floor, do you know?

A. I am sorry about that; Kluczyk was living on the third floor when we moved in there; on the first floor, I don't remember.

Q. You say the Kluczyks were living there when you moved in; how did they remain there, if you recall?

A. You mean on the third floor?

Q. Yes.

A. That I don't know, not to the exact address.

Q. Did they later move on the first floor?

A. That is right.

Q. Where did they move to then?

A. First floor, front.

Q. After they moved on the first floor; immediately under you, wasn't it?

A. That is right.

Q. Then who lived on the third floor?

A. Haupts moved in.

Q. Haupts?

A. I am quite sure.

Q. When did they, or about when did they move in on the third floor?

A. The exact time, I don't know, but it must have been in 1941.

Q. It is subsequent to the time you were living in

325 the building on the second floor, is that correct?

A. That is right.

Q. Now, did you ever have a conversation with Mr. Herbert Haupt?

A. I did not.

Q. Did you ever see him during his lifetime?

A. I did not.

Q. Was Herbert Haupt at any time ever in your apartment on the second floor?

A. He was not.

Q. During the time you lived there?

A. He was not.

Q. Was he up there during the month of June at any time, 1942?

A. He was not.

Q. I will show you Government's Exhibit 3 in evidence, and ask you whether or not that man was ever in your apartment?

A. He was not; no.

Q. Now, with reference to this apartment building at 2234 North Fremont Street, were you living on the second floor, was there any entry through the front, through the front entrance,

was there any way they could go through that front entrance to the apartments in the rear?

A. They could not; no.

326 Q. And there were three apartments in front, were there not?

A. That is right.

Q. There were three in the back?

A. That is right.

Q. To gain entrance to the ones in the rear, what entrance would they have to use?

A. Have to go around the back.

Q. There was no entrance to separate the one in front, is that correct?

A. That is right.

Q. Who was living with you in your apartment on the second floor at 2234 North Fremont?

A. Well, we had a party staying with us for a short time.

Q. During the month of June who lived there, 1942?

A. Gee, I don't know.

Q. Who else beside yourself?

A. My wife.

Q. Just yourself and your wife?

A. That is right.

Mr. HURLEY. Cross-examine.

Mr. WARNHOLTZ. No cross-examination.

Mr. HURLEY. That is all. Mrs. Probst:

327 MRS. MERIDETH PROBST, called as a witness by the Government, after having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. HURLEY:

Q. Will you state your name, please?

A. Mrs. Merideth Probst.

Q. Keep your voice up. Probst, is that correct?

A. That is right.

The COURT. What is your first name, madam?

The WITNESS. Merideth.

By Mr. HURLEY:

Q. Where do you live, Mrs. Probst?

A. 1443 North Hudson Avenue, Apartment 3-B.

Q. And you are the wife of Arthur J. Probst, who just testified, are you?

A. Yes, sir.

Q. And prior to living at 1443 North Hudson Avenue, where did you live?

A. 2234 North Fremont Street, second floor front.
Q. Second floor in front, is that correct?
A. Yes, sir.
Q. And when you moved into that apartment on the second floor at 2234 North Fremont Street?
A. What is that?
328 Q. When did you move into that apartment on the second floor at 2234 North Fremont Street?
A. October 1, 1940.
Q. October 1, 1940. And you lived there until what date?
A. October 1, 1943.
Q. I will show you Government's Exhibit 3, and ask you whether or not that person was ever in your apartment while you lived at 2234 North Fremont Street?
A. No, sir.
Q. He was not?
A. He was not.
Mr. HURLEY. Cross-examine.
Mr. WARNHOLTZ. No cross-examination.
Mr. HURLEY. That is all.
(Witness excused.)
Mr. FINN. Mr. Wittrock.

FREDERICK MARTIN WITTROCK, called as a witness by the Government, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. FINN:
Q. Will you state your name?
A. Frederick Martin Wittrock.
Q. You have to talk slowly and distinctly, Mr. Wittrock.
329 Spell your last name, please.
A. W-i-t-t-r-o-c-k.
Q. Where do you live, Mr. Wittrock?
A. At the present time I live in San Bruno, California.
Q. What is your business or occupation?
A. Coppersmith.
Q. How long have you lived in California?
A. One year and two months.
Q. Were you living in Chicago in June of 1942?
A. I did.
Q. Do you know Hans Haupt?
A. I do.
Q. Will you point him out in the courtroom here?
A. Right there [indicating].
Mr. FINN. The record may show that the witness indicated the defendant.

Q. How long had you known Hans Haupt before June 1942?
A. Since 1930, I believe.
Q. And did you ever work for Mr. Haupt?
A. I did.
Q. In what capacity?
A. Common laborer.
Q. What business was he in at that time?
A. General contractor.
Q. Had you ever met Herbert Haupt, his son?
A. I did.
330 Q. I will show you Government's Exhibit 3 for identification, and ask you if you can tell us what that is.
A. That is Herbert Haupt.
Q. Now, at that time, did you know a family known as Stanley—Mr. and Mrs. Stanley Kluczyk?
A. Yes.
Q. How long had you known the Kluczyk family?
A. Well, Stanley Kluczyk I know; oh, he went to school with me in the Old Country.
Q. In Germany?
A. In Germany.
Q. How long have you been acquainted with him over in this country?
A. I should say about seventeen years.
Q. Did you at any time work at the Simpson Optical Company?
A. I did.
Q. When were you employed by that concern?
A. I believe it was from April 1941 until 1942 in November, I believe it was, if I am not mistaken.
Q. Now, did Herbert Haupt at any time work for that same concern while you were working there?
A. He did.
Q. Did you also know a boy known as Wolfgang Wergin?
A. I do.
331 Q. When did you become acquainted with him?
A. At the same place by the Simpson Optical Company.
Q. Did he work for the same concern?
A. Yes.
Q. At the time when you were employed there?
A. Yes, sir.
Q. What did you do for that concern?
A. I was blocking lenses.
Q. And what business were they engaged in?
A. Making lenses for dive bombers on those optical lenses used for bombsights and also for photographers and all that stuff, see, on those lenses.

Q. How frequently did you see Hans Haupt before June 1942?

A. Oh, we met occasionally at the Schubert Liedertafel, whenever we could go there for an evening to sing.

Q. Where did they meet?

A. At Northwest Hall on North Avenue, I believe it was, North Avenue and Western Avenue.

Q. Now, calling your attention to August 1941, shortly after Herbert Haupt had left, did you have a conversation with Hans Haupt relative to Herbert Haupt?

A. I did.

Q. Where did this conversation take place?

A. In Northwest Hall.

332 Q. By the way, up until the time when Herbert and Wolfgang left, did they both work for the Simpson Optical Company?

A. They did.

Q. Did you know at the time when they left?

A. Yes, sir.

Q. Now, getting back to this conversation at the Northwest Hall in August after they had left, will you tell us what was said by Hans Haupt on that occasion?

A. Well, we came to talk——

Mr. WARNHOLTZ. Just a minute. What was the date?

Mr. FINN. August 1941. I suggest that counsel make his objection to the court, so that the court may rule on them.

Mr. BERTRAM. I just ask for the number, please.

Mr. WARNHOLTZ. All right.

Mr. BERTRAM. Withdraw the objection.

By Mr. FINN:

Q. Will you tell us what was said on that occasion.

A. Well, we came to talking about Herbert Haupt and he was saying that Herbert was at the time in Tokio.

Q. He was what?

A. In Tokio.

Q. In Tokio?

A. Yes, sir.

333 Q. Did he say what Herbert was doing in Tokio?

A. He wasn't quite sure what he was doing there; maybe as a farmer, or something. He wasn't quite sure. Hans didn't know at the time.

Q. Did he tell you how he knew that Herbert was in Tokio?

Mr. BERTRAM. Object to the leading question. That is not the proper way to ask it.

The COURT. Sustained. Ask him what was said and done at that time.

By Mr. FINN:

Q. What was said further with relation to what else was said in this conversation?

A. That he received a telegram.

Q. From where?

A. From Tokio.

Q. Calling your attention to the 22nd day of June 1942, on Monday evening, where were you on that evening?

A. I was at Kluczyk's home.

Q. What floor were they on?

A. On the first floor.

Q. How frequently did you visit the Kluczyk home at that time?

A. Oh, most any day during the week.

Q. Were you working at that time or not?

A. No, I was not. I was sick at the time.

334 Q. And did you come over to their home frequently for meals, or something like that?

A. I did.

Q. How often did you come there for your meals?

A. Well, every morning for breakfast, I should say as long as I was sick anyway.

Q. Now, at about 7 o'clock on that evening, which room were you sitting in?

A. In the front room.

Q. Will you tell us what happened while you were there?

A. Mr. and Mrs. Haupt and also Herbert Haupt knocked at the door and came into the front room.

Q. Was there a conversation that took place there in the front room?

A. Mr. Kluczyk asked Herbert Haupt "how far have you been," and he said, "Well, South America, Mexico, and all over"; that is the exact words what was said at that time.

Q. What else was said, if anything?

A. Nothing. Well, they were in an awful hurry; they had to go see somebody, so they left right away.

Q. Now, did you see Herbert Haupt after that evening around those premises?

A. Yes; outside.

Q. When did you see him on the next occasion?

335 A. Well, he came downstairs with his mother and I was sitting in the dining room drinking coffee.

Mr. BERTRAM. Just a moment. The witness in the apartment of the Kluczyk's?

The WITNESS. Yes, sir.

Mr. BERTRAM. I will object to what the witness thinks he saw

or surmises before he saw anyone come out of the building into his apartment, where he was sitting.

By Mr. FINN:

Q. Well, how do you know who came through—came downstairs with his mother; how do you know that?

A. Well, we could hear it.

Mr. BERTRAM. I object.

The COURT. Overruled.

The WITNESS. Every footstep that was made on the stairs, the stairway, it went right through the board. We could hear as they came downstairs, the stairway, and you could look through the dining room into the front room portion and see who came in and who went out.

By Mr. FINN:

Q. Did you hear anything first before you saw them; did you hear anything?

A. We heard someone coming down. We didn't know who it was, of course.

336 Q. Then what did you see?

A. I saw Herbert Haupt and his mother outside on the sidewalk.

Q. What did you see them do?

A. They walked down to Webster Avenue, going down to Webster on Fremont Street.

Q. What street did they walk on?

A. On Fremont Street. They walked and walked to Webster.

Q. Do you recall what day that was?

A. Well, I couldn't exactly say the date.

Q. No, I didn't say the date; do you recall you testified first you saw him Monday evening?

A. I did.

Q. When was it afterward you saw him first?

A. On Wednesday, I believe it was.

Q. At about what time?

A. That was around eleven or twelve o'clock noon, something like that.

Q. Now, did you at any time after that see Herbert Haupt around those premises?

A. No; I did not see him again after that.

Mr. FINN. I think that is all with this witness.

Cross-examination by Mr. WARNHOLTZ:

Q. Mr. Wittrock, when you refer to the Schubert's
337 Liedertafel, you mean the Schubert's Singing Society, that is what that stands for, doesn't it?

A. That is right.

Q. How long were you connected with the Optical—the Simpson Optical Company?

A. Oh, about a year or so. I don't know exactly the dates.

Q. No; about from when to when, about?

A. From April 1 of 1941 until 1942, in October or November. I couldn't say when, I am not quite sure.

Q. Now, did you have any previous experience in the matter of grinding lenses, or anything that had to do with manufacturing optical instruments?

A. I did not; no.

Q. While the particular type——

Mr. FINN. I will object to this cross-examination. I don't see how it is material.

Mr. WARNHOLTZ: Oh, yes, yes; you will find out.

The COURT. I don't see it. Overruled.

By Mr. WARNHOLTZ:

Q. The particular type of work you did there, in what department did you do that?

A. In the blocking department.

Q. Were Herbert Haupt and Wolfgang working with you in the same department?

A. They were not; no.

338 Q. What were they doing?

A. They were entirely in different departments.

Q. Do you know in which department?

A. They were in the polishing department and the grinding for particularly lenses, what you call them, you know, more particular lenses. They were working for a length of time in that department.

Q. They were there before you?

A. They were.

Q. They joined this Simpson Optical Company?

A. They were.

Q. Do you know how long they had worked there already?

A. That I don't know.

Q. Did you ever hear anybody say that Herbert Haupt induced the Simpson Optical Company to engage in the manufacture of the Norden Bomb sight?

Mr. FINN. I object to that.

The COURT. Sustained.

Mr. FINN. I will withdraw my objection.

The COURT. Let him answer.

By Mr. WARNHOLTZ:

Q. What connection did Herbert Haupt have with the Norden Bomb sight?

A. I really couldn't tell you, I don't know.

Q. Did you ever see the Norden Bomb sight while you were there?

339 A. Me; I never saw it; no.

Q. Do you know if Herbert Haupt had any connection with it at all?

A. I couldn't say, I don't know.

Q. You don't know?

A. No.

Q. Mr. Wittrock, on that day when you saw Herbert Haupt together with his mother outside, where did you first see him, outside, or just where?

A. On the sidewalk.

Q. You didn't see him walk down the steps to the sidewalk, did you?

A. No; I did not.

Q. You merely saw him on the sidewalk?

A. On the sidewalk; yes, sir.

Q. You would not say whose footsteps you heard?

Mr. FINN. I object to that.

Mr. WARNHOLTZ. Come out of the building.

Mr. FINN. I object to that, merely as a conclusion anyway, your Honor.

The COURT. Let him answer.

By Mr. WARNHOLTZ:

Q. When you testified about two years ago you didn't testify about hearing any footsteps, did you?

A. I do not remember. I couldn't say.

Mr. WARNHOLTZ. That is all. Thank you.

340 Redirect examination by Mr. FINN:

Q. Do you remember whether you were asked about any footsteps at that time?

A. What?

Q. Do you remember whether you were asked about any footsteps at that time?

A. I was not asked about any footsteps.

Recross-examination by Mr. WARNHOLTZ:

Q. Do you remember you were asked today about footsteps, did you offer the information, do you remember that now?

A. That I offered that information myself?

Q. That is right. And you were not asked today either. That is all. Thank you.

Mr. FINN. That is all.

ANDREAS CONRAD GRUNAU, called as a witness by the Government, after having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. HURLEY:

Q. State your name.

A. Andreas Conrad Grunau.

Q. Where do you live, Mr. Grunau?

A. 6361 Leoti.

341 Q. What is your business or occupation?

A. I am Superintendent of the Simpson Optical Manufacturing Company.

Mr. HURLEY. Speak up so that we can hear you.

The WITNESS. I am Superintendent of the Simpson Optical Manufacturing Company.

Q. And how long have you been connected with that company?

A. Fourteen years.

Q. And where are they located?

A. 3200 Carroll Avenue.

Q. 3200 Carroll Avenue?

A. That is right.

Q. And what is the nature of the material that they manufacture?

A. We manufacture lenses for instruments.

Q. What kind of lenses?

A. All kinds of lenses; yes.

Q. And is that company engaged in production of material for the Army and Navy?

A. Yes, sir.

Q. And how long has it been so engaged?

A. Since 1939.

Q. And since 1939 and the years following, what percentage of that production is for the Army and Navy?

A. Well, at that time, I couldn't exactly remember 342 any more. Today we manufacture one hundred percent.

Q. One hundred percent?

A. Today, yes.

Q. Now, did you know a person by the name of Herbert Haupt?

A. Yes, sir.

Q. I will show you Government's Exhibit 3, and ask you if know who that is?

A. Yes, sir.

Q. Who is it?

A. That is Herbert Haupt.

Q. Going back for a moment as to the things produced by your company, do they now sell what is known as a Norden Bomb

sight, the Simpson Optical Company; does that company make parts for the bomb sight?

A. Yes, we make parts for it.

Q. And how long have you made such parts?

A. Since 1936.

Q. Continuously from 1936?

A. No; we just started to work on that production; started in 1939.

Q. The production started in 1939, you say?

A. Yes, sir.

Mr. HURLEY. You have to keep your voice up, because the folks here don't hear you.

The WITNESS. All right.

343 Mr. HURLEY:

Q. Now, when did you first see Herbert Haupt?

A. I met him, the boy, I think, I don't remember exactly.

Q. About when was it?

A. I think in 1937.

Q. 1937?

A. Yes, when I——

Q. That is all right. You met him in 1937?

A. That is right.

Q. Now, did you know his father Hans Haupt?

A. Yes, sir.

Q. Do you see him here in the courtroom?

A. Yes, sir.

Q. Will you point him out?

A. Right over there.

Q. Indicating the defendant Hans Haupt. And when did you first become acquainted with Hans Haupt?

A. It was the same year.

Q. 1937?

A. Yes, sir.

Q. Now, did Herbert Haupt ever work at the Simpson Optical Company?

A. Yes, sir.

Q. When did he begin to work for that company?

A. It was in the year 1939.

Q. About what time in the year, do you recall?

344 A. I think it was in the early spring.

Q. And how long did he work for the Simpson Optical Company?

A. About two years.

Q. And he terminated his employment, did he, in 1941?

A. Well, we had a training course in there, in our factory,

which we started about in 1933, on the optical trade, which was quite new, and there wasn't any skilled labor, and we started in 1933 a training course in our factory to train skilled labor for the optical trade, and he was in that training department.

Q. He worked about two years, starting in 1939, to the spring of 1941; is that right?

A. That is right.

Q. Did you see Herbert Haupt on the evening of June 22; Monday evening, June 22, 1942?

A. Yes.

Q. Where did you see him at that time?

A. Well, I came home that night about 8 o'clock, and when I entered my home I saw Herbert Haupt, Mr. Haupt and Mrs. Haupt and my daughter and my wife.

Q. Herbert Haupt and Hans Haupt and Mrs. Erna Haupt, and your daughter and your wife?

A. Yes, sir.

Q. Where were they in your house?

345. A. They were in the living room.

Q. And about what time did you get home that evening, if you know?

A. Shortly before 8 o'clock in the evening.

Q. And after you came in your home that evening and found those folks there, what, if anything, did you say, or what, if anything was said to you by any of them as you entered?

A. When I came in, I said, "Hello" to everybody, and I asked the boy——

Q. By the boy, whom do you mean?

A. Herbert Haupt. Asked him where he came from, because I knew he was out. He left at that time our company and he told me that he went to Mexico, and that he was back now. I said, "What have you been doing over there in Mexico," and he said, "He had a mule and he was hunting gold in the mountains, digging gold."

Q. Did he say anything else about where he had been, if you recall?

A. I asked him at that time, then, I asked him, or I told him that the police came to our factory and asked for him, because he hadn't been drafted—he was of draft age, and he didn't report to the Draft Board. Then he took a little wallet out of his

346 pocket and showed me the draft card and on the other side it said, "Wallet," and I further looked and I saw the draft card and he had reported by the FBI.

Q. Who said he had reported?

A. Herbert.

Q. He told you he had reported?

A. Yes, sir.

347 The WITNESS. Then after a while, a short time later he asked me for a job.

By Mr. HURLEY:

Q. Who was there when he asked you for the job?

A. Myself, Mr. Haupt, Mrs. Haupt, my daughter—I think my daughter was there, I don't remember anymore.

Q. Do you remember whether she was there in the room?

A. I don't remember.

Q. What was said about a job?

A. He said he would like to get the job back.

Q. He would like to get a job back, with whom?

A. Simpson Optical Company.

Q. All right.

A. I told him it might be possible, only he should come down on a Thursday and fill out an application so as he left the company he would have to fill out an application. His application had to be checked first then he would get this job. So I ordered him down—told him to come down Thursday morning to the factory.

Q. Did he say anything else about the employment?

A. No, he did not. He asked me later on if he could get a

348 deferment when he worked in our company. I told him it is not my job that will be done from the front office.

Q. A deferment from what was he asking?

A. Not to be drafted in the army.

Q. You told him that that would have to go through the front office?

A. That is right.

Q. You had nothing to do with it?

A. Yes.

Q. After you first met the defendant, Hans Haupt, did you see him on occasions after that?

A. Yes, I did. I belonged to a German Singing Society, and whenever they had a concert I used to be in there, on the concert.

Q. And where would they meet?

A. The singing society met in the Northwestern Hall there, but the concert was in the Germania Clubhouse.

Q. How often would you say those——

A. They had a concert once a year.

Q. Did you ever see Herbert Haupt at any of the meetings?

A. No.

Q. Of any of those societies?

A. No, sir; I never seen him.

349 Q. Did he ever tell you of any societies that he belonged to?

A. No; he did not.
Q. Do you know of any German organizations he belonged to?
A. I heard rumors.
Mr. WARNHOLTZ. That is objected to.
Mr. HURLEY. No rumors. Do you know?
A. No; I do not know.
Mr. HURLEY. Cross-examine.

Cross-examination by Mr. WARNHOLTZ:

Q. Mr. Grunau, about how long did this take, or about how long does it take to go through this training course that you had at your plant?
A. About four years.
Q. About four years?
A. Yes, sir.
Q. The person that takes that training course, what does he do there during those four years? Does he just study or does he also work and get paid for it?
A. They work partly there, they get training for any ap-
350 plication which we have, any job which is necessary; a skilled labor after while.
Q. When you came home on June 22nd you found those people in your front room, Herbert Haupt——
A. Yes.
Q. Hans and his wife——
A. Yes, sir.
Q. And Mrs. Grunau and your daughter?
A. That is right.
Q. They were talking with each other, were they?
A. Well, when I came in it was quiet. I said hello. They were not talking when I came in.
Q. Now, then you related or talked about certain conversations you had with Herbert. Were all of those in the same room downstairs in the living room?
A. No, I—not all. I have a study on my second floor. I have a residence. I looked for something to smoke, and I used to have some on the first floor. I looked in my containers. There was none in there. So I went to the second floor to get some smoking and when I went on the second floor he came after me.
Q. This matter of deferment that Herbert spoke to you about and the matter of applying for a job, was that downstairs or upstairs?
A. Applying for the job was on the first floor.
351 Q. And the matter of deferment was it upstairs?
A. When I went down the steps again, when I came

down the steps, going down to the first floor, he asked me, going down the steps on deferment.

Q. At that time Hans Haupt was not so present that he could hear that, was he?

A. No.

Q. When you talked about this matter of Herbert getting a job back again, what was Hans doing? Was he talking with his wife or somebody else at the time, or was he listening closely, or do you not know?

A. He did not say anything.

Q. He did not say anything?

A. No, sir.

Q. Well, did you particularly observe whether someone else talked to him perhaps during that time?

A. I do not remember that. I cannot tell you that, I do not know.

Q. You would not know?

A. No.

Q. So there were six people in the room at that time?

A. That is right.

Mr. WARNHOLTZ. That is all, thank you.

352 Mr. HURLEY. That is all.

(Witness excused.)

The COURT. We will take a short recess, ladies and gentlemen.

(Whereupon a recess was taken.)

Mr. FINN. Your Honor, I should like to recall Mrs. Kluczyk for one question.

The COURT. Very well.

BARBARA KLUCZYK, heretofore called as a witness on behalf of the Government, having been previously duly sworn, was recalled as a witness and testified further as follows:

Direct examination by Mr. FINN:

Q. You are the same Mrs. Kluczyk who previously testified in this case, is that correct?

A. That is right.

Q. Mrs. Kluczyk, at any time in June of 1942, except Monday evening when Herbert Haupt, and his father and mother came into your apartment, at any time during that month was Herbert Haupt in your apartment?

A. No.

Q. Did he at any time stay in your apartment?

A. No.

353 Q. Or sleep in your apartment?

A. No.

Mr. FINN. That is all.

Mr. WAGNHOLTZ. No cross-examination.

(No cross-examination. Witness excused.)

JOSEFA GRUNAU, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. HURLEY:

Q. Will you state your full name, please?

A. Josefa Grunau.

Q. You are the wife of Andreas Conrad Grunau——

A. Yes.

Q. Who previously testified, are you not?

A. Yes, sir.

Q. Where do you live, Mrs. Grunau?

A. 6361 Leoti.

Q. Did you know Herbert Haupt?

A. Yes, sir.

Q. I show you Government's Exhibit 3 and ask you if you know who that is?

A. Herbert Haupt.

354 Q. Do you know Hans Haupt, the father?

A. Yes, sir.

Q. Do you see him in the courtroom?

A. Yes, sir.

Q. Will you point him out?

A. Yes, sir.

Mr. HURLEY. Indicating for the purpose of the record the defendant, Hans Max Haupt.

Q. Calling your attention to Monday evening, June 22, 1942, did the Haupts come to your home that evening?

A. Yes, sir.

Q. And who came?

A. Mrs. Haupt, Mr. Haupt, and Herbert Haupt.

Q. At about what time did Mr. and Mrs. Haupt and Herbert Haupt come to your home on that evening?

A. After seven o'clock.

Q. What time?

A. After seven.

Q. Will you speak up as loud as you can?

A. After seven.

Q. Who was with you when those folks came to your home?

A. My daughter, Edith.

Q. Edith Grunau?

A. Yes, sir.

Q. How did they come out to your house, to your

355 home?

A. With a car.

Q. Where were you and your daughter at the time the Haupts came up to your home in the car?

A. We were outdoors.

Q. I cannot hear you.

A. We were outdoors, outside.

Q. Out in front?

A. Yes.

Q. Yourself and your daughter?

A. Yes, sir.

Q. Did you go anywhere after they arrived?

A. Go inside.

Q. Into the home?

A. Into the home.

Q. Into what room did you go?

A. Into the front room, parlor.

Q. Hans Haupt, Erna Haupt, and Herbert Haupt went in there with you and your daughter, yourself and your daughter?

A. Yes, sir.

Q. Was your husband home at that time?

A. No.

Q. What was said by anyone after the Haupts came to your home that evening?

A. He told me——

Q. Who?

A. Herbert Haupt.

356. Q. What?

A. He said he came from Mexico.

Q. He said he came from Mexico?

A. Right.

Q. Where were you when he said that?

A. Inside.

Q. In the living room of your home?

A. Yes, sir.

Q. And the rest of the people that you have named were in there with you at that time?

A. Yes, sir.

Q. Did he say anything else?

A. Was gold digging.

Q. Where?

A. In Mexico.

Q. He was gold digging in Mexico?

A. Yes.

Q. Do you recall anything else that he said at that time?

A. Well, he hoped to get his job back.

Q. What did he say anything about a job before your husband came in?

A. He said, "I hope I get my job back."
Q. Who did he say that to?
A. He said that in the front room.
Q. Who was there?
A. My daughter, myself, and Mr. Haupt.
357 Q. And yourself?
A. Yes, sir.
Q. Do you know what job he was referring to when he said that?
A. No.
Q. Do you know where he worked before he had left?
A. No, I do not know.
Q. You do not know where he was working?
A. No, sir.
Q. He just said, "I hope I will get my job back?"
A. Yes.
Q. Anyone else say anything there that evening in the front room before your husband came back?
A. Mrs. Haupt.
Q. What did she say?
A. She said her sister-in-law called her up, she should come down to her home; that she went down to her sister-in-law, she said do not be scared, I have a big surprise for you; then she went up; she went up in the flat, then she saw her son.
Q. At her sister-in-law's home?
A. In her sister-in-law's home.
Q. Is that right?
A. Yes.
The COURT. Then she saw what?
A. Then she saw her son, she got a shock.
358 The COURT. I did not understand you.

By Mr. HURLEY:

Q. Who was the sitser-in-law, do you know?
A. I do not know. She just said sister-in-law.
Q. Sister-in-law?
A. Sister-in-law, that is all.
Q. What time did your husband come home that evening?
A. Before eight o'clock, maybe half past seven or a quarter to eight, I cannot remember exactly the time.
Q. Were all of these people there when your husband came home, all the people that you have named?
A. Yes, sir.
Q. What, if anything was said when your husband came in?
A. My husband said, "Where you come from?"
Q. Who did he say that to?

A. To that young Haupt.
Q. That is Herbert Haupt?
A. Herbert.
Q. What did Herbert say?
A. He came from Mexico.
Q. What else did he say?
A. Well, he said he bought a wrist watch.
Q. He said he bought a wrist watch?
359 A. Yes, sir.
Q. Did he say anything else?
A. Not that I remember.
Q. How long was Hans Haupt, Erna Haupt and Herbert Haupt—how long did they remain at your home that evening?
A. About three quarters of an hour, or an hour; I do not know exactly.
Q. Was there anything said as they were leaving, by any one of them, was anything said by your husband to any one of them?
A. Well, my husband said "I will see you Thursday."
Q. Who did he say that to?
A. To that boy.
Q. Herbert Haupt?
A. Yes.
Q. Did he say where he would see him?
A. I suppose——
Q. But you do not suppose—did he say where he would see him?
A. In the factory.
Q. At the factory?
A. At the factory.
Q. Where was your husband working at that time?
A. Simpson.
Q. Optical Company?
A. Yes.
Q. Did Mrs. Haupt say anything there in the presence of
360 the people that you have mentioned about where Herbert had been and what he had told them?
A. No.
Q. Do you remember anything that she said about where he had been and had told them?
A. No; she did not say. She said she did not care where he was; the main thing he was back, "I have got my son back." That is what she said.
Q. She did not care where he had been. Is that what she said?
A. Something like that.
The Court. Read the statement back, Mr. Reporter.
Q. Mrs. Grunau when Mrs. Haupt said, "I do not care where he

was, the main thing he was back 'I have got my son back.' That is what she said.")

Mr. HURLEY. Cross-examine.

Cross-examination by Mr. WARNHOLTZ:

Q. Mrs. Grunau when Mrs. Haupt said, "I do not care where he was, I have got my son back" who had asked her at that time whether or not she cared, or what was said before?

361. A. My daughter, she asked something, but I cannot remember what she asked.

Mr. WARNHOLTZ. That is all. Thank you.

Mr. HURLEY. That is all. Thank you.

(Witness excused.)

EDITH MCGOWAN, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. FINN:

Q. Will you state your name, please?

A. Mrs. Jack McGowan.

Q. Your name is Mrs. McGowan?

A. Yes.

The COURT. What is your first name?

A. Edith.

By Mr. FINN:

Q. When did you become Mrs. Edith McGowan?

A. March 13, 1943.

Q. Prior to that time what was your maiden name?

A. Edith Grunau.

Q. In that year 1942, did you live at 6361 Leot Avenue?

A. Yes, sir.

Q. That is your parent's home?

362 A. Yes, sir.

Q. I understand you are now living out in California; is that correct?

A. Yes, sir.

Q. Are you the daughter of Andreas Conrad and Josefa Grunau?

A. Yes, sir.

Q. Prior to June of 1942, Mrs. McGowan, did you know a boy named Herbert Haupt?

A. Yes, sir.

Q. I show you Government's Exhibit 3 for identification and ask you if that is Herbert Haupt?

A. Yes, sir.

Q. Do you also know Hans Haupt?
A. Yes, sir.
Q. Can you point out Hans Haupt in the courtroom?
A. That gentleman sitting right back there.
The COURT. Suspend just a moment please.
Mr. FINN. Let the record show the witness is indicating the defendant.
The COURT. Proceed.
Mr. FINN. What was the last question?
(Record read.)

Q. Calling your attention to the evening of June 22, 1942,
363 did the Haupts come out to your house at 6361 Leoti Avenue?
A. Yes, sir.
Q. Who came?
A. Mr. Haupt and Mrs. Haupt and the son.
Q. Herbert Haupt?
A. Yes, sir.
Q. Approximately what time was it, as you remember?
A. Around seven o'clock.
Q. Were you inside the house or outside the house on that occasion?
A. Outside.
Q. Do you recollect how they arrived at your house?
A. In a car.
Q. Do you know who was driving?
A. Mr. Haupt.
Q. Can I presume you greeted them out there, did you?
A. Yes, sir.
Q. And after that did you go inside the house?
A. Well, my mother showed them the garden first. Then my mother and Mr. and Mrs. Haupt and Herbert Haupt went into the house. Then about ten minutes later I went in the house.
Q. When you went in the house where were these various people sitting, that is, Mr. Haupt, Mrs. Haupt, Herbert Haupt, and your mother?
364 A. Herbert Haupt was sitting by the radio in the chair. Mr. Haupt was sitting on the sofa. Mrs. Haupt was sitting in a large chair against the window. My mother was sitting in a chair by the door.
Q. Was this in the living room of the house?
A. Yes, sir.
Q. Tell us what if any conversation there was at that time?
A. Well, the only thing, I was sort of interested in, how she found out about her son. I mean I asked how he got here and he said he got here in a roundabout sort of way, a roundabout

sort of way; then I asked her how did she find out how he was here.

Q. You asked her. Do you mean Erna Haupt?

A. Yes, sir.

Q. Was Hans Haupt present during the conversation?

A. Yes; he was.

Q. Yes.

A. I asked—whether she just told me, I do not remember exactly, but she did say that her sister-in-law had called her.

Q. Just go slowly.

A. Her sister-in-law had called her; told her she had a surprise for her, to come right over; when she got there the sister-in-law greeted her, she had a surprise for her, not to get a shock,
365 but her boy was back and he was here; and I guess it must have been in the bedroom, they had him in there and she went in and she saw him then, and that was all she told us.

Q. Did she say who the sister-in-law was?

A. No, sir.

Q. Do you know who the sister-in-law was?

A. I think I know now from the papers.

Q. I see. All right. Now, did Mrs. Haupt say anything further after she described how she had seen her boy in the bedroom?

A. She said she did not care how he got here; she did not ask him how he got here, the only thing she was interested in was that he was back.

Q. Was your father there at that time?

A. No, sir; he was not.

Q. Did he subsequently come in?

A. Well, probably around 7:30 or twenty minutes to eight, or something like that.

Q. When your father came in will you just tell us the conversation which took place?

A. Well, he had come in and said "Hello, where in the world have you come from?"

Q. Who was he talking to?

366 A. Talking to Hans Haupt—I mean to Herbert Haupt. He said to him, "Where in the world have you come from?" Herbert Haupt said he had just come in a roundabout way, that he had been in Mexico digging gold.

Q. What else did he say, if anything?

A. Well, then after awhile I guess I was not there when he was asked about the job or anything.

Q. All right.

A. But I do——

Q. Do not testify to anything you did not hear yourself.

A. Later on he did show us his draft board card and he said that he had reported to the FBI.

Q. You heard that conversation?
A. Yes, sir.
Q. Who said that?
A. Herbert Haupt said that he had reported to the draft board and to the FBI.
Q. Was Hans Haupt there at that time?
A. Yes, sir.
Mr. FINN. I think that is all with this witness.

367 Cross-examination by Mr. WARNHOLTZ:

Q. Mrs. McGowan, when Herbert told your father that he had reported to the FBI was that in reply to your father's statement to him that the police called at the factory? Did you hear a conversation that they had been around?
A. Yes; my dad did mention that, that they had come to the factory, inquired about him, didn't he know, because it was the draft board and the FBI were looking for him and he said yes, he had reported to the draft board in answer to my dad.
Q. In the course of that conversation?
A. Yes, sir.
Q. When Mrs. Haupt said she did not care how Herbert had come home, what conversation preceded that statement, do you remember?
A. Well, I guess after she got through telling about how she had seen her son for the first time, why, I guess—whether my mother asked or not how he got there—if she did not know how he got here, I guess she must have asked something. I do not remember exactly.
Mr. WARNHOLTZ. Thank you. That is all, Mrs. McGowan.
(Witness excused.)

368 HIENRICH KOCH, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. FINN:

Q. Will you state your name, please?
A. Hienrich Koch.
Q. Will you spell your name for the reporter?
A. H-i-e-n-r-i-c-h K-o-c-h.
Q. Where do you live, Mr. Koch?
A. 7240 North Odell.
Q. In Chicago, Illinois?
A. In Chicago, Illinois.
Q. What is your business or occupation?
A. I am a shop foreman and supervisor.
Q. For what company?

A. Simpson Optical.
Q. How long have you been engaged in that occupation?
A. About eleven years.
Q. Were you born in this country?
A. I am born in Germany.
Q. When did you come to the United States?
A. In 1928.
Q. Did you know Herbert Haupt?
369 A. Yes, sir.
Q. I will show you Government's Exhibit 3 for identification and ask you if that is Herbert Haupt or was it Herbert Haupt?
A. Yes, sir.
Q. When did you first meet Herbert Haupt, your best recollection?
A. In 1939.
Q. Where did you meet him on that occasion?
A. In the shop when he started to work.
Q. Did he work in your department, under you?
A. Yes, sir.
Q. What was his occupation? What was he doing for the company?
A. He was a lens grinder, and a polisher.
Q. Do you also know the defendant, Hans Max Haupt?
A. Yes, sir.
Q. Will you point him out in the courtroom, please?
A. Yes, sir, right there.
Mr. FINN. Indicating the defendant.
Q. Did you also know a boy by the name of Wolfgang Wergin?
A. Yes, sir.
Q. Where did you become acquainted with Wolfgang Wergin?
370 A. In the shop also.
Q. Did he work in the same department or a different department than Herbert Haupt?
A. It is not exactly the same department, but these belong together.
Q. Do you recall when it was that Herbert Haupt left the country?
A. It was in 1941.
Q. And up until the time when he left did he work for the Simpson Optical Manufacturing Company?
A. Yes, sir.
Q. Did Wolfgang Wergin work for that concern up to that time also?
A. Yes, sir.

Q. Some time after Herbert Haupt had left this country, did you have a conversation with Hans Haupt or Erna Haupt in Hans Haupt's presence?

A. Yes, sir.

Q. With reference to any word that they might have received?

A. Yes, sir.

Q. When was that, to the best of your recollection?

A. I think it was the summer of 1941.

Q. And will you tell us what was said in that conversation.

371 Mr. WARNHOLTZ. Just a moment, please. I object to the prior question that he had a conversation with Hans Haupt and Erna Haupt. We would like to know with whom.

By Mr. FINN:

Q. With whom did you have the conversation?

A. I cannot exactly say.

Q. Were they both present at that time?

A. Both was present; yes.

Q. Will you tell us what either one of them said?

A. That they received a telegram "We are sailing."

Mr. WARNHOLTZ. That is objected to. We would like to know who said this. Who is talking now.

The COURT. Can you tell us?

The WITNESS. I cannot tell exactly who said it.

The COURT. Well, go ahead.

By Mr. FINN:

Q. Will you tell us what either one of them said?

A. That they received a telegram, "We are sailing."

Q. Hans Haupt was present at the time when that conversation took place; is that correct?

A. He was there; yes.

Q. Did you later have a conversation with Hans Haupt or with Erna Haupt in the presence of Hans Haupt concerning another cablegram?

372 A. Yes, sir; later in the year when I was going to a concert.

Q. Where did that conversation take place?

A. In the Germania Club.

Q. Where?

A. In the Germania Club.

Q. The Germania Club?

A. Yes.

Q. Can you tell us about when it was?

A. It must have been around in October, somewhere.

Q. Do you recollect who took part in this conversation, who said things in the conversation?

A. I cannot remember that.

Q. Was Hans Haupt present at the conversation, when the conversation took place?

A. He was there; yes.

Q. All right. Just tell us what was said.

A. That the family Wergin received a telegram, "We are in Tokio."

Q. "Gene," is that Wergin?

A. Wergin.

Q. You say Wergin. Well, Hans Haupt said what?

A. That the family Wergin received a telegram, "We are in Japan."

Q. Whom were you talking about at the time?

A. Of course, I believe the boys——

Q. Who were you talking about at the time?

Mr. BERTRAM. I object to that, if the Court please, 373 both the question and the answer.

The COURT. Let him answer.

The WITNESS. The boys.

By Mr. FINN:

Q. What boys?

A. Her son Herbert and the boy Wolfgang Wergin.

Q. Calling your attention to the 22nd day of June 1942, in the evening of that day, did Hans Haupt and Erna Haupt and Herbert Haupt come to your home?

A. Yes, sir.

Q. Approximately what time was it when they got to your house, to the best of your recollection?

A. It was about 9:30.

The MARSHAL. Your Honor, may we have a few minutes recess?

The COURT. Take a short recess, ladies and gentlemen.

MR. FINN. One of the jurors is sick.

(Whereupon a short recess was taken.)

Mr. FINN. What was the last question?

(Record read as follows: "Approximately what time was it when they got to your house, to the best of your recollection? A. It was about 9:30.")

Mr. FINN. Your Honor, we have a witness who has 374 just informed me that his boy is going overseas, and he is leaving toward the end of Monday, so that if the witness does not get out of here this afternoon, he won't be able to see his boy. I would like at this time, if the Court please, to withdraw this witness and put the other witness on.

The COURT. Any objection?
Mr. WARNHOLTZ. No objection, Your Honor.
(Witness withdrawn.)

ALFRED H. GRUNOW, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. HURLEY:

Q. Will you state your name, please?
A. Alfred H. Grunow.
Q. Where do you live, Mr Grunow?
A. Minneapolis, Minnesota.
Q. Minneapolis?
A. Yes, sir.
Q. Did you know Herbert Haupt?
A. Yes, sir.
Q. I will show you Government's Exhibit 3 and ask you if that is a picture of Herbert Haupt?
375 A. Yes, sir.
Q. Do you know Hans Haupt?
A. Yes, sir.
Q. Do you see him in the courtroom?
A. Yes, sir.
Q. Will you point him out?
Mr. HURLEY. Indicating the Defendant Hans Max Haupt.
Q. Now, do you know Mr. and Mrs. Walter Froehling?
A. Yes, sir.
Q. Are they any relation to you?
A. Yes, sir.
Q. What relationship?
A. Cousins.
Q. Cousins?
A. Yes.
Q. Did you visit their home during the month of June 1942?
A. Yes, sir.
Q. On what date? When was it? What date did you visit them?
A. The 20th of June.
Q. That was on a Saturday was it?
A. On a Saturday; yes, sir.
Q. What time did you arrive there on Saturday?
A. About five o'clock.
Q. In the afternoon?

A. Yes, sir.

376 Mr. FINN. The 20th? Is that what he said?

The WITNESS. 20th.

By Mr. HURLEY:

Q. What address did the Froehlings live at that time?

A. Somewhere on North Whipple; I forgot the number.

Q. On Whipple Street?

A. Two something, I guess.

Q. Was that 3643 North Whipple?

A. Yes, sir; I guess it is.

Q. How long did you stay on this visit that you made to the Froehling home?

A. Until Monday morning, about five o'clock I left.

Q. That would be June 22nd?

A. 22nd.

Q. Is that right?

A. Yes.

Q. Did you see Herbert Haupt at the Froehling home while you visited there?

A. Yes, sir.

Q. When did you see him?

A. (No answer.)

The COURT. Pardon me. Are you sick again, Madam?

A JUROR. Yes.

The COURT. You may step out.

377 (Conference between court and counsel not made part of the record.)

Mr. FINN. May I ask the witness a question.

The COURT. Yes.

(Conferences between counsel and witness and thereafter between court and counsel not made part of the record.)

The COURT. We will recess at this time, ladies and gentlemen, until ten o'clock Monday morning.

In the meantime do not discuss this case with anyone or permit anyone to discuss it with you; and if anyone should attempt to communicate with you report that fact at once to the court; ten o'clock Monday morning.

(Whereupon an adjournment was taken to Monday, May 29th, A. D. 1944, at the hour of 10:00 o'clock A. M.)

378 In the District Court of the United States for the Northern District of Illinois Eastern Division, at Chicago

UNITED STATES OF AMERICA

vs.

HANS MAX HAUPT

Before Hon. JOHN P. BARNES, Judge, and a Jury

Monday, May 29, 1944, 10:00 o'clock A. M.

Parties met pursuant to an adjournment.

Counsel present: Mr. J. Albert Woll, United States District Attorney for the Northern District of Illinois, Eastern Division, at Chicago, and Mr. Earle C. Hurley, and Mr. Richard C. Finn, Assistant United States District Attorneys for the Northern District of Illinois, Eastern Division, at Chicago, appeared for the United States of America; Messrs. Paul A. F. Warnholtz, Frederick J. Bertham, appeared for the Defendant.

* * * * *

379 Mr. WARNHOLTZ. May it please the court, there are a few points which I believe if they are taken up before the Jury comes in, possibly in your Honor's chambers, they will help to expedite the hearing considerably.

The COURT. Step into my chambers, gentlemen.

(Thereupon the following proceedings were had in the court's chambers outside the hearing and presence of the Jury:)

Mr. WARNHOLTZ. May it please the court: I do know from the first trial of this case that we are about to have offered the so-called background evidence.

Mr. FINN. We won't get to that today.

Mr. WARNHOLTZ. It is possible, but it will fit in with the rest of it. Now, this background evidence so-called relates to statements made by the defendants, or this defendant. Some of these statements were made as far as five or six years ago, and it is our contention that this testimony, or this type of testimony, should not be held admissible for the purpose of proving an intent. It is for that purpose the Government has introduced it heretofore and we presume will introduce it at this time.

380 Now, the reason for our contention that it should not be admissible and as support for that reason I may state from the Circuit Court of Appeals decision in this particular case, and that decision states:

"We refer to another line of statements admitted against individual defendants, but it must have been damaging to all those labeled in the Government's brief, which was the background of

contention. This testimony was admitted, so it is asserted for the purpose of showing treasonable intent or the state of the defendant's mind. It covered an extremely wide field. In fact, as to some of the defendants, the testimony seemed as though they were on trial for the sins of a lifetime. We think much of it had no relevancy to the crime of treason. We are not, however, considering or deciding that relevancy, but its effect on defendants other than those against whom it was admitted."

I further would like to call your attention to another paragraph in the decision of the Circuit Court of Appeals in this case where the court stated:

"The inherent nature of the crime of treason, particularly
381 when a person charged therewith is tried during time of
a national crisis is such as to greatly increase the obstacles to a fair determination of the issue presented. Such difficulties impose upon courts an increased responsibility commensurate with the increased difficulties."

I may further state that logically it does not seem to be consistent to introduce a statement made by the defendant, which was made before the United States was in war, because treason can only be committed during war time. None of these statements as made constitute a crime at the time they were made, and they were made at such a time that today even as crimes they would be barred by the statute of limitations. Somewhat in the line of argument, and I may state ordinarily when a man is on trial for the commission of a crime, it is not permissible to bring in his past record as to another crime which he has committed.

I also refer to the decisions on treason and there is not a single decision on treason—I am not now talking about sedition, but I am talking about treason—there is not a single decision on treason which states that, and where evidence is so remote, that it may be introduced for the purpose of showing the intent. It is true in the Aaron Burr case somewhere it was held that remote
382 actions may be shown for the purpose of showing the intent, but these remote acts refer to the levying of war and we know in levying war in those days, more than a hundred years ago, the levying of war or the preparation for it, consumed a great deal of time, on account of the great deal of time it took, one year or two years, which it took for a man perhaps to travel from place to place, where it takes hours today, and in those days it took months, and in referring to the acts committed a year prior thereto, the ultimate overt act, was admissible on the theory that it formed a part of the ultimate act, and in that way the Aaron Burr case admits those remote acts.

There is one more case where evidence was held admissible to show something that happened in the community as far as nine

months prior to the same overt act. I know of no others. Then in sedition, of course, it is different in sedition. I am not talking about the United States Supreme Court now, but the courts have held and allowed the Government to go further back than a year or so in sedition cases.

That is one of the points I wanted to bring up. Then we will be confronted with another proposition, and that is the
383 testimony which the Government stated it would introduce for the purpose of showing that this certain money was hidden under the rug; that is the same money that is covered by the motion to suppress, and which was sustained.

Mr. WOLL. I don't know that it is the same money. I haven't the slightest idea.

Mr. WARNHOLTZ. Well, money covered under a rug in the home of Haupt. Now, the Government states it will prove this by statements made by the defendant, and by witnesses who are not Government agents. It is possible that the Government may bring as such witnesses the two men who are now in the State Penitentiary, Statesville Penitentiary, and if that testimony should be admitted, I will state it will be very damaging. I do not believe it will be giving the defendant a fair trial in that respect and it is utterly impossible for us to rebut that testimony due to the condition of the defendant. I do believe at least it is somewhat inconsistent with the order which was entered with reference to that particular money or any money under a rug, hidden under a rug in the Haupt home. I have a further point to cover. I believe the evidence should not be admitted relating to some actions of Herbert
334 Haupt done while the defendant Haupt was not present. Now, if such evidence does establish in any way, or at any rate, the status of Herbert Haupt as an enemy, then it may be admitted under that theory, but if all these particular actions of Herbert Haupt, having no bearing on this enemy status, be merely ordinary actions such as committed by any human being in the ordinary course of life, then I believe that should be barred.

The COURT. Well, you are referring now to what?

Mr. WARNHOLTZ. Well, now, I will take, for instance, actions of Herbert Haupt's as shown on the first trial. At one time he is supposed to have slept in the home of Froehling, Hans Haupt's——

The COURT. Of whom?

Mr. WARNHOLTZ. Of Froehling; Mrs. Froehling is his sister; Mrs. Haupt is a sister of Mr. Froehling.

Mr. FINN. Mr. Froehling is a brother of Mrs. Haupt.

Mr. WARNHOLTZ. Mr. Froehling is a brother of Mrs. Haupt, yes; that is right. That is one of the instances. Hans Haupt was not present at the time, and I do not believe incidents of such a type

should be admitted in evidence, because the mere fact somebody slept somewhere of itself does not prove the enemy status.

385 Then of course, we still have this matter as to testimony concerning the overt acts charged in the indictment, where the Government knows that there is but one witness, and intends to introduce testimony by such single witness for the purpose of proving intent only.

Now, it is our contention that such testimony from such evidence would only be corroborative and it should not be admitted until the overt act has been proven by two witnesses. Then, as corroborative evidence, it may be admitted. It seems then ultimately—and I have one more point, and that is this: The Government having quite a few exhibits asked that it be given a table exclusively and the defense moved further back, which was all right so far, but it has brought us entirely out of contact with the Jury. The defendant is not able to confront the witness. It is difficult for defendant's counsel to hear the witnesses testify. That has been remedied to some extent by Mr. Bertram and myself simply moving over to the Government's table and with that limited space that we could find, get a little closer to the witnesses and understand them better. Now, I believe that most of the exhibits have been introduced. There may be a couple of cablegrams and a few belongings which were taken from Herbert's body, such as

386 Social Security card and the rings he wore, et cetera, and I believe those are all exhibits that are left. We have now at the present time, in front of the witness there, and in front of the Jury, the Government's table where there are three agents of the Federal Bureau of Investigation and three Government attorneys, and I do believe that it would be fair if it can be arranged so that the defendant would again take one side of the first table together with his counsel.

Mr. FINN. I can't hear you.

Mr. WARNHOLTZ. Together with its counsel, if the Government should take the few exhibits which are left, I have suggested that the Government can find a side of the present Government's table, or cause them to be left on an adjoining table where the three agents of the Federal Bureau of Investigation can set them, and the exhibits can be there without inconvenience or interference.

Mr. WOLL. Talking on the last point first, your Honor, of course, I realize the arrangements were made by the court, and whatever your Honor wants to do about it is satisfactory to us, but I do like to have the record clear, however. You mean to say the defendant cannot be seen by the witnesses sitting in court?

387 Mr. WARNHOLTZ. I mean to say that. I mean to say the witnesses cannot see the defendant unless he bends around the Judge's desk.

Mr. WOLL. Well, of course, this is the first time you made this objection, is it not?

Mr. WARNHOLTZ. That is the first time to the court; yes.

Mr. WOLL. The court made arrangements to which you acceeded, and this is the first time you have complained.

Mr. BERTRAM. It is not deliberate, but it is the inconvenience we have been put to.

Mr. WOLL. I say, this is the first time you have objected to the court about this arrangement?

Mr. WARNHOLTZ. That is correct.

Mr. BERTRAM. We have called Mr. Finn's attention to it.

Mr. WOLL. I think something can be done, if it is so difficult.

The COURT. Well, I don't like the implication in the statement.

Mr. WOLL. I want to have the record clear, if your Honor please, if there is an appeal.

Mr. WARNHOLTZ. You see, the witnesses can't see the defendant.

388 The COURT. Go in there and sit in that chair and see what you can see. Don't make a record you are not sure of. You go in there, both of you, counsel, and one of you sit in that chair at a time, and see what you can see.

(Thereupon counsel for the defendant leaves the court's chambers for the courtroom.)

Mr. WARNHOLTZ. Yes; the witness can see the defendant, yes; judging from where I was sitting, there is the proximity of the Judge's desk which obscures the view.

The COURT. Now, what is the fact?

Mr. WARNHOLTZ. The witness is able to see the defendant.

The COURT. Yes.

Mr. WARNHOLTZ. He can see the defendant.

The COURT. He can see all places on both tables. You go and sit in that chair again, and see what you can see, and put it in the record. You go in there and see also, counsel. Go and sit in the chair and come in here and put in the record what you see.

(Thereupon counsel for the defendant again retired to the courtroom from the court's chambers.)

The COURT. Now what did you see?

389 Mr. WARNHOLTZ. I do see. When counsel sits down in the chair which I occupied heretofore, I see him fairly well, but not entirely. Not the entire part of the face, but that is not so important.

The COURT. You don't see whose face?

Mr. WARNHOLTZ. Of the witness. If I go to my place, which I had heretofore, to look at the witness, part of his face was obscure by the corner of the desk.

Mr. BERTRAM. And we couldn't hear.

The COURT. Mr. District Attorney, you have the Federal Bureau of Identification——

Mr. WOLL. Yes, your Honor.

The COURT (continuing). Take some photographs from where that witness is or from where the witness would naturally be, that is an ordinary size man or woman sitting in that chair; have some photographs taken this afternoon, or some time during the day and put them in this record, what can be seen from that witness chair, so that there won't be any doubt of what can be seen.

Now, then, I have been in this courtroom since December of 1933, and this is the first time I have had complaints of this kind from a defendant. It has been the practice for the Government to take the table on the court's right and the defend-
390 ant take the table on the court's left. I told you, you might pull that table to the left in toward the court's right. I haven't any objection to your so doing. I have observed you going over to the Government's table from time to time. I haven't any objections to your so doing. I haven't any objection to your making the seating arrangements as convenient as possible, but I do object to your putting into the record something that doesn't happen. I do not think that you have been prejudiced or your defendant has been prejudiced by the seating arrangement in the courtroom, and in order to make that appear, I want those photographs made.

Mr. BERTRAM. May I add, we had a great deal of difficulty in hearing, your Honor?

The COURT. Everybody has a great deal of difficulty hearing in the courtroom, because the structure or building is in a block, only six stories above the street, and there are three streetcar intersections—there are two streetcar intersections on two of the corner. There are streetcars on three sides of this building and this block, and everybody has difficulty in hearing in every courtroom in this building.

Mr. WOLL. I would suggest, and especially when the windows are open.

391 The COURT. And this is the end of May, and the windows are open. There is no air-conditioning in the building. Now, you folk are being unreasonable. I want you to do everything you can for your client, but don't put into the record something that is not warranted.

Mr. BERTRAM. We can hear if we were at the first table here, your Honor.

The COURT. You have been over at the other table most of the time. I don't think you are being fair. The duty to your client doesn't require you to be unfair to a court, and that is just exactly

what you are doing by putting this statement in that you are making.

Mr. WARNHOLTZ. I wish to assure the court that is not the purpose to put something in the record, and this doesn't need to appear in the record at all. I would much rather have it that way. The purpose is to get somewhat of a better arrangement if we could get closer to the witness and have a better understanding, and have a little closer contact with the jury there.

The COURT. Now, you see, there are three different attorneys who are engaged in the trial of the case.

Mr. WARNHOLTZ. That is right.

392 The COURT. There is one Government agent who is apparently directing the case for the investigating agency, and there are two young men in charge of the exhibits.

Now, your idea of the psychology of a juror is entirely different from that of some people.

I observe that the greatly experienced trial lawyers and the greatly experienced jury trial lawyers come in alone. They have nobody with them at the table. The reason for that is, they do not want to arouse the antagonism of some juryman, so your idea of jury psychology is altogether different from that of the very greatly experienced jury trial lawyers.

Mr. WARNHOLTZ. Well, I am not an experienced jury trial lawyer at all.

Mr. WOLL. I don't think we are either.

The COURT. The greatly experienced jury trial lawyer sits at the table alone and there is nobody within thirty feet of him, and they communicate very little. They don't communicate in the presence of the jury. He is just alone there at the table, so your idea of the psychology of a jury, I am telling you, is different from that of a greatly experienced jury trial lawyer.

393 Mr. FINN. Does your Honor wish to discuss the other legal objection?

The COURT. Yes.

Mr. HUDLEY. Take up the question of this boy sleeping there; that he was in the home of Froehling.

Mr. FINN. And this defendant was there later on the same day. The proof will show the boy came there early in the morning.

The COURT. Well, I don't see why that isn't admissible. The defendant is charged with having given aid and comfort. Now, what he did during this period in question, I think is relevant and material. Of course, the mere fact it wouldn't do any harm, is no reason why it should be admitted. I think the movements of Herbert Haupt during this period in question are relevant and

material evidence, and if it happens he slept some place, and the evidence shows it, I can't see any error in that.

Mr. WARNHOLTZ. Then that motion is overruled, your Honor?

The COURT. Yes.

Mr. FINN. With reference to the question of the prior statement or statements of the defendant, your Honor will remember the cases in the briefs, which started on page 131, going through
394 to page 145, and it has been held to be the law in all cases involving political opinion as Wigmore links it together, including sedition and treason.

In a number of cases in which sedition is charged, the rule has been linked together with that in treason cases. It is held proper to put in evidence of this character to show the intent or state of mind of the defendant in committing the overt acts. In other words, the law is that there is a presumption of the continuation of such state of mind, and in a number of cases, numerous cases, for instance, the Pelly case, which was decided in this circuit, it was held permissible to show the German Bent, as they call it, and in the Pelley case they went back ten years.

Mr. WARNHOLTZ. That is sedition, not treason.

Mr. FINN. I appreciate that. It is a sedition case, but the principle is the same, certainly, in sedition and treason——

Mr. WARNHOLTZ. Now, just a minute.

Mr. FINN. Just a moment. I didn't interrupt you at all. In the case of William Dadley Pelley, the defendant was charged in a twelfth count of the indictment with a violation of the Federal Sedition Law. The charges arose out of the publication of certain periodicals alleged to have been circulated by Pelley.
395 And in the Vireck case, which was not a sedition case, but which was a violation of the foreign agents registration act, the court permitted in evidence the introduction of a book written by the defendant in 1930, which was nine years before the statute, under which the defendant was prosecuted, was passed by Congress.

Now, in a number of sedition cases, the exact point which has been raised by the defendant here was decided.

Wigmore cites a number of cases in which it has been held error in cases of this character, such as treason, sedition, et cetera, to refuse to permit the defendant, as well, to put in evidence of his good character, and his Americanism, et cetera. He says it is just as admissible for the defendant to put in evidence of being a good American citizen, for example, as it is for us to put in evidence that he made these utterances. Now, the utterances, which we intend to prove, are of this character, your Honor. We

contend that they project themselves beyond any question of a declaration of war. For example, we will prove, in 1939, before the war, this man said he would never permit his boy to join the American Army, and if he were drafted, he would send
396 him over to Germany and have him become a member of the German Army, and if there was a declaration of war, that he, Hans Haupt, would crawl over the enemy line and give information to the enemy, and things of that character which projected themselves beyond the declaration of war, and they showed up directly what his intent was after the declaration of war, and when this boy came back. That is the type of thing which we will prove. I think, the first statements were made in 1937, and they continued on after that, and they got worse up until, exactly until this boy left. We have statements that will link up with each other, which were continual, and which will show what this man's state of mind was at that time, and I believe that under all of these decisions, it is admissible. For example, and I want to show you, for instance, in the case of United States versus Schultze, 253 Fed. 377, which went up twice on different points, the identical contention was made by the defendant, namely, that evidence of pro-German utterances before the last war started, were inadmissible to prove the crime of sedition during the last war. In that case the court said the evidence was admissible.

The court held the same character of evidence was admissible with reference to sedition as to treason and held such evidence admissible.

397 Now, here is another case. In Equi versus United States (C. C. A. 9) 261 Fed. 53, at 56, in which the court said there:

"Counsel earnestly insisted that this ruling was erroneous for the reason an illegal intent can never be inferred from a legal act, etc."

Rest of quotation read.

Now, we have collected in our brief a number of those various cases, of various types. Now, the intent in treason is the same as the intent in sedition.

The COURT. What is the earliest incident you expect to call the court's attention to?

Mr. FINN. The earliest, I think, is a conversation in 1937. There were two, I believe, in 1939, and a series of them along from 1940 up until March 1941 testified to by Mrs. Fishman, who employed these people up until just before Herbert Haupt left for Germany.

Mr. WARNHOLTZ. May I briefly reply to this?

The COURT. Yes.

Mr. FINN. The boy left June 16, 1941. I think the last utterance of this character will be around in March of 1941. They are of

this type. "In case of a war if the United States goes to war with Germany, there will be a revolution in this country.
398 We have men placed in all the electrical companies and utility companies, that this country will be destroyed from within by fifth column activities just as Norway and France were." Statements of that character, that is the general trend of the conversation up until the time the boy left.

Mr. WARNHOLTZ. I should like to reply to this, Mr. Finn. At the outset, you said there is a long line of cases. I still contend there is not a single case, at least, not on the books, and if Mr. Finn has one, if he will kindly give it to us, that citation, so that we can check it accurately, but there is not a single case that upholds their contention.

Mr. Finn did read some decision a moment ago regarding disloyal utterances made before we got into war, and those made after war. Now, disloyal utterances made before war and an overt act committed after we get into war, certainly is not a continuation of the same act, as we do see that. Beginning with about the time when the war broke out, on the other side, I believe, is—it was one year or two years before we got into it, there were controversies in the country as to whether or not we could join the war. If somebody gave vent to his anger, by taking one
399 position, and another one takes another position as to remarks, and later on, if we get into war, and they say he committed treason, I do not believe that would terminate in a fair trial, because people will say things when they are angry without meaning it.

The COURT. Well, there are very few treason cases.

Mr. WARNHOLTZ. That is right.

The COURT. Prior acts may be shown on the question of intent; I do not believe we are confined to treason cases in order to determine logically, what may be shown on the question of intent, but it is my desire to stay strictly within the limitations laid down by the Circuit Court of Appeals. But we have this situation: I assume we have this situation, the defendant did certain things with respect to Herbert Haupt and is charged to have done those things with a criminal intent, with the intent to assist the enemy of the United States, and give him aid and comfort. Now anything within a reasonable time that will throw light upon the intent with which he did those things, I think should be submitted to the jury in order that they can judge for themselves whether the acts,
400 which the evidence shows, were committed with a criminal intent. I do not see how they can judge otherwise, and I do not think where the charge is what it is here, going back to 1937, is too far back. There mere fact that the war as we say, did not begin until December 7, 1941, or December 8 or 9, 1941,

make no difference. That is a phrase. As a matter of fact, Japan and Germany, as we now know, were levying war on us for quite a number of years before that planning what they were going to do to us. We know that today. The mere fact we didn't know it, or we didn't take cognizance of it until the declaration of war, does not mean they were not levying war quite a long time before December 1941. I want the Government to bear in mind the limitations laid down by the Circuit Court of Appeals, and do everything possible to stay within that.

Mr. FINN. I will say, in addition we will submit a very definitely limiting instructions on this subject. The identical instruction, which was given in the Cramer case.

The COURT. Now, is there some other matter to be discussed?

Mr. WARNHOLTZ. Do I understand the motion is overruled?

The COURT. I am not going to overrule anything until you present an objection at the time something is offered that
401 you think is improper.

Mr. WOLL. I understand from the rest of his question that was raised, that he was assuming that Hans Haupt made some statements to two men that were incarcerated in Joliet, and that evidence should not be admitted for the reason that it could not be controverted.

The COURT. Well, because some evidence cannot be controverted, that is no reason for not admitting it. There may be other reasons. There may be questions which go to its weight.

Mr. WOLL. That is correct.

The COURT. Which might even render it valueless. That is a question for the jury, not for the court. If it is admissible on the question of intent or by the way of admissions out of court, it may be shown.

Mr. FINN. That is right. Also as corroborative evidence of intent as to the overt acts and the intent as to other acts, that is true.

Mr. WOLL. It certainly contradicts the theory of the defendant of an innocent purpose on that basis it would be admissible
402 alone. It also brings home knowledge of the enemy status of this defendant at the time he did commit those acts which were performed, and shows he knew that Herbert Haupt was a German spy. It is admissible, I think, for four or five separate reasons, and that is what we have in mind. The other one, if your Honor please, was the same question which we discussed the other day in chambers, as I understand, Mr. Warnholtz wants proof of the overt acts by one witness, but we must first establish the overt acts by two witnesses; is that what you have in mind?

Mr. WARNHOLTZ. As they are somewhat related——

Mr. WOLL. I think the matter of proof is up to your Honor.

Mr. BERTRAM. I think the Jury would be confused. If the Government has only one witness to support the act, and the Government comes and puts on evidence to support the act on which they have only one witness, I think that would be damaging and prejudicial to the defendant, because that overt act is in the indictment.

The COURT. Well, that answer Mr. Finn made the other day, they have a right to show that on the question of intent, and why haven't they? Why haven't they?

Mr. WARNHOLTZ. Because of the decision in the Aaron
403 Burr case, which states it can only be corroborative and first the overt act must be proven.

The COURT. Oh, that, of course, that is a question as to the order of proof. Now, in a conspiracy case, for instance, thereoretically, you have to prove conspiracy first. In proving the evidence in a conspiracy case, you start in and you are just overwhelmed with objections, "they haven't yet shown the conspiracy" and the court stops the District Attorney who undertakes to connect it up, and if he doesn't show conspiracy, it goes out, and after they come on for four or five days, then the objections cease, and the reason for that, there have been so many instances from which a jury or court might infer unlawful, and in conjunction with that, they no longer see any reason for making the objection, but in a conspiracy case, that is somewhat different. I have never yet seen anybody go on and say A, B, C, D, and E may have entered the room and conspired, naturally agreed together to do certain things. You never have evidence like that.

Now, here, what the order of proof could be, is hard to say. Doubtless the Government will put it on in a way which they think will best tell the story from their viewpoint. I haven't any quarrel with the method that they choose so far. What
404 they may do in the future, I don't know. If you think it is bad in form as to what is the fair method of presentation, make an objection at that time, and I will hear you.

Mr. WARNHOLTZ. I may not have correctly stated the opinion of the Aaron Burr case. The Government has a right to choose the order of its proof, no doubt, but——

The COURT. I don't think there is any limitation as to when they have to prove the intent. That is the first thing, bring on witnesses. Now, generally speaking, they exhaust the witness's recollection so as to not to have to recall him. Under the general rule, it is the purpose to get a witness to state everything, and if they are going to do that, it should be done particularly in war time, so as to conserve manpower, and with the result you may get some evidence a little out of the logical line.

Mr. WARNHOLTZ. That seems to be all the points we have.

The COURT. What else?

Mr. FINN. That is all, your Honor.

The COURT. I want you to have the FBI mount the camera so that its lens, so that the picture which it takes is where the eyes of the ordinary witness would be.

405 Mr. FINN. We will take a front view, right view, and left view.

Mr. WARNHOLTZ. And vice versa, from my chair to the witness.

Mr. WOLL. Understand, I will do what the court directs.

The COURT. Well, after he takes it, you take a seat in the chair.

Mr. WARNHOLTZ. I can see when I sit up there, my eyes are here.

The COURT. The instructions are to place the camera so that the photograph taken will be of the average man or woman of average height.

Mr. WOLL. It will be from the eyes; the picture will be taken of the entire face.

The COURT. Yes. From the eyes as you sit in the chair.

Mr. BERTRAM. We observed great difficulty actually, your Honor, in trying to hear the witness and see the witness.

The COURT. No, I have told you that in every courtroom in this building, that is the condition. This building was built in the '90s. This courtroom is noisy. There are noises in this building in every courtroom for this entire city block. There

406 are car lines on three sides of the block and two streetcar intersections on two corners of the block, and we are only six floors from the street, and it is very warm sometimes in May, and we have no air conditioning in this building. Now, we have had juries and courts and counsel which have labored under these conditions for over fifty years, and probably will labor under them for another fifty years, and people have had fair trials in spite of all these noises.

Mr. WARNHOLTZ. It was not brought up for the purpose of getting error in. That was not the situation, but it was for the purpose of remedying the situation.

The COURT. On the seating arrangements, I want you to arrange it, so that everybody will have the best place possible within the limitations of the courtroom.

Mr. WOLL. May I suggest for the morning session you join with us on our table. I don't want the tables moved at this time.

The COURT. All right.

(Thereupon the following proceedings were had in the courtroom in the presence and hearing of the Jury:)

407 Mr. HURLEY. Shall we proceed now, your Honor?

The COURT. Yes.

ALFRED H. GRUNOW, a witness called on behalf of the Government, having been previously duly sworn, resumed the stand and testified further as follows:

Direct examination (continued) by Mr. HURLEY:

Q. You are the same Alfred H. Grunow who was on the witness stand when court closed on Friday afternoon, are you not?

A. Yes, sir.

Q. I believe you had stated that on June 20, that you were visiting. It was on a Saturday, 1942, you were visiting at the home of Walter Froehling and his wife; is that correct?

A. Yes, sir.

Q. And you identified a picture of Herbert Haupt?

A. Yes, sir.

Q. And had pointed out the defendant, Hans Haupt?

A. Yes, sir.

Q. How did you arrive at the Froehling home on that day, June 20, Mr. Grunow?

408 A. We arrived with my truck; painting truck.

Q. And you are a painter by trade; is that correct?

A. Yes, sir.

Q. And about what time was it when you arrived there on that Saturday?

A. About five o'clock, sir.

Q. And you entered the home at five o'clock in the afternoon?

A. Yes, sir.

Q. You entered the home at that time?

A. Yes, sir.

Q. Who was there when you went in?

A. Mr. and Mrs. Froehling, and then two children.

Q. Do you know the names of the children?

A. Yes, sir.

Q. What are their names?

A. Esther, and I forget the little boy's name.

Q. Esther Froehling?

A. Yes, sir.

Q. Was the other child a girl or boy?

A. Boy.

Q. Now, did you remain at the Froehling home that evening?

A. Yes, sir.

Q. And did anyone else come into the house during that night or early morning on Sunday, June 21?

A. Yes, sir.

409 Q. Who was that?

A. Herbert Haupt.

Mr. WARNHOLTZ. Just a moment. That is leading, if your Honor please. We object to that form of questioning.

The COURT. Sustained.

By Mr. HURLEY:

Q. Did you see anyone else in the home besides the persons you have named, the following day?

A. Is that in the evening, sir?

Q. Sometime the next morning, on the Sunday morning, did you see anyone else in the home besides the people you have named?

A. Except Herbert Haupt.

Q. You saw him that next morning?

A. Yes, sir.

Q. Then where was he when you saw him?

A. He was in bed, sleeping.

Q. Where was that bed, with reference to where you were sleeping?

A. In the dining room, on the couch.

Q. Where did you sleep that night?

A. I slept with Herbert Haupt.

Mr. WARNHOLTZ. If your Honor please, at this time I want to make the objection for the record, the basis being that it
410 has not been shown that Hans Haupt was present at the time of these occurrences. This is what went on with Herbert Haupt in the home of Froehling, being without the defendant, Hans Haupt, being present. It is immaterial and irrelevant to any of the overt acts charged in the indictment.

The COURT. Overruled.

Mr. WARNHOLTZ. Incompetent.

Mr. HURLEY. At what time was it, on that morning——

Mr. WARNHOLTZ. May that objection obtain and consider to have been made with reference to like evidence which will be introduced later on, so as to make it unnecessary to interrupt?

Mr. HURLEY. If there is any objection you want to have made, you should make them, not general. That is too general.

Mr. WARNHOLTZ. All right.

By Mr. HURLEY:

Q. What time was it when you saw Herbert Haupt, about what time, in the bed there in the Froehling home that morning?

A. Well, I looked at his face about eight o'clock in the morning.

Q. Was that when you got up?

A. Yes, sir.

Q. Now, how long, if you know, did Herbert Haupt remain there in the Froehling home that day?

411 A. About two and a half, three hours, before noon.
Q. About what time did he get up, if you know?
A. He got up about, close to eleven.
Q. Eleven o'clock in the morning?
A. Yes, sir.
Q. About what time did he leave the Froehling home?
A. Before noon; before 12 o'clock.
Q. Did you see anyone else come to the Froehling home that same day, later during the day?
A. Yes, sir.
Q. Who came?
A. Mr. and Mrs. Haupt.
Q. That is the defendant?
A. Yes, sir.
Q. Hans Haupt?
A. Yes, sir.
Q. And about what time did they come?
A. They came in the evening, around 6:30 or so.
Q. Did anyone else come in?
A. Mr. and Mrs. Wergin.
Q. Wergin?
A. Yes, sir.
Q. About what time did they arrive?
A. About twenty minutes after.
Q. Twenty minutes after the defendant and his wife arrived there?
A. Yes, sir.
Q. Did anyone else come in after the Wergins came in?
A. Herbert Haupt.
Q. What time did he come in?
412 A. About the same time; about twenty minutes after.
Q. He came in about the same time; about twenty minutes after whom—after who?
A. After Mr. and Mrs. Wergin.
Q. Where were you in the Froehling home when the defendant Haupt and his wife got in?
A. I just got through eating supper in the dining room.
Q. You were in the dining room?
A. Yes.
Q. Mr. and Mrs. Froehling and the two children.
Q. What room did the defendant Haupt and his wife come into when they entered the home?
A. They came through the front room, in the dining room.
Q. How long did you remain in the dining room after the defendant Haupt and his wife came in?
A. About five minutes.

Q. About five minutes, did you say?
A. After; yes.
Q. Where were you when Mr. and Mrs. Wergin came in?
A. I was in the dining room, playing with the children.
Q. And where did the Wergins go after they came into the Froehling home?
A. They went through the dining room, in the dining
413 room.
Q. And where were the Haupts sitting in the dining room?
A. Around the table.
Q. Around the table?
A. Yes, sir.
Q. And where did the Wergins sit when they entered the dining room?
A. Around the table.
Q. Where did Herbert Haupt go when he came into the Froehling home?
A. He went through the front door, in the dining room, front room into the dining room.
Q. He went into the dining room?
A. Yes.
Q. Where did he sit in the dining room?
A. Around the table.
Q. Were all of these people sitting around the table?
A. Yes, sir.
Q. Were Mr. and Mrs. Froehling seated at the time at the table with the other folks?
A. Yes, sir.
Q. How far were you when you were in the living room; how far were you away from that dining room table?
A. About twelve, fourteen feet.
Q. What were you doing in the living room?
A. I was playing with the children.
414 Q. Those were the Froehling children; is that right?
A. Yes, sir.
Q. What were the defendant Haupt and his wife and Mr. and Mrs. Wergin and Mr. and Mrs. Froehling and Herbert Haupt doing when they were sitting at the dining room table?
A. They was on the dining room table, sitting down, kept a conversation.
Q. They were talking, were they?
A. Yes, sir.
Q. In what language were they talking, if you know?
A. Most part, German.
Q. German?

A. Yes.

Q. Now, how long did those people whom you have named, who were sitting around the dining room table, remain there at the table? How long did they stay there?

A. I imagine around about one hour.

Q. About an hour?

A. Yes, sir.

Q. Now, what happened after they had been seated at that table for about an hour? What did they do, if anything.

A. Talking.

Q. After they had been seated for about an hour, did anything happen?

A. No, sir; nothing happened, then.

415 Q. Did any of them leave at any time?

A. Oh, yes.

Q. After they had been seated there how long?

A. They started going away.

Mr. BERTRAM. I object to the leading question.

The COURT. Sustained.

Mr. BERTRAM. I move the answer be stricken.

The COURT. Let it stand.

By Mr. HURLEY:

Q. What time did these people leave the Froehling home that night?

A. Before eight o'clock.

Q. Who left at that time?

A. Mr. and Mrs. Haupt, Mr. and Mrs. Wergin, and Herbert.

Q. Herbert Haupt?

A. Yes.

Q. Do you know how those people arrived there that evening? How they came there?

A. No, sir; I do not know how they arrived there.

Q. Did you see them leave?

A. Yes, sir.

Q. How did they leave?

A. Mr. and Mrs. Haupt left with the car.

Q. Whose car was that, do you know?

A. I suppose it was Mr. Haupt's car.

Q. And where was that car parked with reference to the Froehling home?

A. In front of the house.

416 Q. In front of the house?

A. Froehlings' house.

Q. You say Mr. and Mrs. Haupt left. Did anyone else leave at that same time or later?

A. Yes. Mr. and Mrs. Wergin.
Q. Wergin?
A. Yes.
Q. Did anyone go with them?
A. With the Wergins; Herbert Haupt.
Q. Did Herbert Haupt take anything with him when he left?
A. He took a suitcase with him.
Q. A suitcase?
A. Yes, sir.
Q. What kind of a suitcase was that, if you recall?
A. That was a tan; kind of a tan suitcase.
Q. Did you see that suitcase at the home of Froehlings?
A. Yes, sir.
Q. Where was it when you saw it?
A. It was in the front room.
Q. Where was it in the front room of the Froehlings?
A. Between the front room and the dining room, about right in the center.
Q. On the floor?
A. Yes, sir.
Q. Was it open or closed?
A. Open.
Q. It was open?
A. Yes, sir.

Q. Was there anything said by any of those people there
417 with reference to that suitcase, in the Froehling home that night?

Mr. Bertram. Objection, unless the defendant was present.
Mr. Hurley. Just yes or no; whether there was or not.
The Witness. Yes.
Q. Was the defendant, Hans Haupt there at that time?
A. Yes, sir.
Q. What was said by any individual, and tell us who said it!
A. Mr. Haupt said——
Q. You are talking about the defendant, Hans Haupt?
A. "Some of my neckties are in there."
Q. In there, where?
A. In the suitcase.
Q. Did anyone else say anything about it?
A. Mrs. Haupt said, "No, them belong to Herbert."
Q. What was in the suitcase, if you saw?
A. Clothes, shirts, and neckties.
Q. Anything else besides shirts and neckties?
A. That is all I know.
Q. Who carried the suitcase out when they left, do you know?
A. Herbert Haupt took the suitcase down the steps.

Q. Did you know where the two, Mr. and Mrs. Haupt
418 and Herbert Haupt and the Wergins were going? Was there anything said about where they were going?

A. Yes, sir.

Q. Where did they say they were going?

A. Where they were going?

Q. Yes.

A. No; they did not say anything about that.

Q. Now, that was about what time in the evening when they left?

A. About eight o'clock, sir.

Q. Where were the Froehling children when they left?

A. In the front room.

Q. They were put to bed—They were not put to bed, were they?

A. No, sir.

Q. Now, when you testified here these people, the two Haupts and Herbert Haupt, the Froehlings and Wergins, were sitting around the table speaking German, could you hear that conversation when you were sitting in the living room?

A. No, sir; I could not understand it.

Q. I will ask you whether or not you had heard those folks conversing in German before?

A. Yes.

Q. Did they ordinarily talk in German or talk in
419 English?

A. Always German.

Q. Always German?

A. Yes, sir.

Q. Now, with reference to this suitcase that you spoke of——

A. Yes, sir.

Q. Could you tell us who carried that out when they went down the street?

A. Herbert Haupt took the suitcase out of the house, out of the steps, and Mr. Wergin took the suitcase carried it to the corner.

Mr. HURLEY. Cross-examine.

Cross-examination by Mr. WARNHOLTZ:

Q. Mr. Grunow——

A. Yes, sir.

Q. Referring to the leaving of Mr. and Mrs. Haupt, and Herbert Haupt, and Mr. and Mrs. Wergin from the Froehling home on Saturday evening, at about eight o'clock, I will ask you these questions: Did Mr. and Mrs. Haupt—by that meaning Hans Haupt—Hans and Erna Haupt——

A. Yes, sir.

Q. Leave in the car that was parked in front of the building?
A. Yes, sir.
Q. Did Herbert Haupt go into that car?
420 A. No, sir.
Q. Did you see him leave the house, walk south on that particular street?
A. Well, sir, I do not know if that is south or north.
Q. He walked in one or the other direction?
A. He walked in another direction.
Q. Together with the two Wergins?
A. Not Missus; just Mister.
Q. Just with Mr. Wergin?
A. Yes.
Q. Then he turned around the corner with Mr. Wergin?
A. I saw him as far as the corner.
Q. As far as the corner?
A. Yes.
Q. You do not know whether they left in any automobile?
A. No, sir.
Q. What happened to Mrs. Wergin?
A. Mrs. Wergin, she was by Haupts' car, I know.
Q. She was by them?
A. Yes.
Q. Did she go into the car, do you know?
A. I do not know for sure.
Mr. WARNHOLTZ. That is all. Thank you.

Redirect examination by Mr. HURLEY:

Q. This Froehling home was located in Chicago, Illinois, was it not?
A. Yes, sir.
421 Mr. HURLEY. That is all.
(Witness excused.)

HIENRICH KOCH, a witness called on behalf of the Government, having been previously duly sworn, resumed the stand and testified further as follows:

Direct examination (continued) by Mr. FINN:

The COURT. Your name is Hienrich Koch?
The WITNESS. Yes, sir.
Mr. FINN. We withdrew this witness, if the court please, last Friday, and I am trying to find out just where we left off.
The COURT. Yes.

By Mr. FINN:

Q. You are Hienrich Koch?
A. Yes.

Q. You are the same gentleman that testified Friday and was withdrawn as a witness; is that correct?

A. Yes, sir.

The COURT. Speak loudly, so that the reporter can hear you.

By Mr. FINN:

Q. I believe that you testified that on the 22d day of June
422 1942, at about 9:30 p. m., the Haupts, including Hans Haupt, Erna Haupt, and Herbert Haupt arrived at your home; is that correct?

A. Yes, sir.

Q. Where were you at the time when they arrived?

A. I was on the back porch.

The COURT. You were where?

The WITNESS. On the back porch.

By Mr. FINN:

Q. Now, will you tell us just what happened after they arrived; where did they go? Did they ring the bell or knock on the door?

A. Yes; they rang the bell and my wife opened the door and they came through th house on the porch. Then Mrs. Haupt said, "Herbert is back. I want to show him to you, so you won't be surprised if you see him one morning in the shop."

Q. All right. Now, then, what did you say?

A. I asked him: "Where did you come from?"

Q. And what did he say?

A. He said, "Oh, I come from Mexico."

Q. Did he say what he had been doing in Mexico?

A. He said he was digging gold.

Q. What further conversation, if any, was there at that time?

A. Well, then, he said that he wants to start working
423 again in defense work, and he talked quite a while to Mr. Grunau about it, and I told him then, well——

Q. Did he say anything on the subject of getting his job back?

A. Yes; he likes to get back in his job.

Q. Was that at the Simpson Optical Manufacturing Company?

A. Simpson Optical; yes.

Q. All right. Go ahead. He said something about having already seen Mr. Grunau; is that correct?

A. Yes, sir.

Q. Tell us anything further that he said at that time.

A. Well, I told him, "Well, you are in that age, where you will get drafted," and then Mr. Haupt said, "I sent him all this morning to the Draft Board and to the FBI."

Q. All right, go ahead. What further did you say to him or to Herbert?

A. Well, I asked him, "I thought you are in Japan," and he said, "Oh, no. We was only a little bit sailing."

Q. Only a little bit sailing?

A. Sailing.

Q. Was there any further discussion about the job or anything of that character? Was there anything said—pardon me, what was your answer?

A. I cannot follow you.

424 Q. Do you recall anything further being said?

A. Not about the job.

Q. About the job, or about his job, do you recall anything further?

A. No.

Q. To refresh your recollection, was there anything said on the subject of draft deferment?

A. Oh, yes; he said that he might—I told him, "Well, you are ready for draft, and you might have to go into the Army then right away."

And he said, "Well, maybe through my two years' experience as a polisher and lens grinder, I might get a deferment."

Q. Do you recollect anything further, any more of that conversation?

A. The only thing I can recall is that Mr. Haupt told—said that he wants to buy him a car so that he can go to work, because he used Herbert's car all the time, and she is in pretty bad shape, and he wants to buy him another car.

Q. How long did they remain at your house that evening?

A. About ten, fifteen minutes.

Q. And then they left, did they?

A. Then they left.

425 Q. Was your wife present when this conversation took place?

A. Yes, sir; we all was on the porch.

Mr. FINN. I think that is all.

Mr. WARNHOLTZ. One minute, kindly. No cross-examination. Thank you.

No cross-examination.

(Witness excused.)

ANNA KOCH, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct examination by Mr. FINN:

Q. Will you state your name, please?

A. Anna Koch.

Q. Anna Koch?

A. Yes, sir.

The COURT. What is the first name?
The WITNESS. Anna.
The COURT. Anna?
The WITNESS. Yes, sir.

By Mr. FINN.

Q. And where do you live, Mrs. Koch?
A. 7240 North Odell Avenue.
Q. You are a housewife, are you?
A. Yes.
Q. And the wife of Mr. Koch who just left the stand?
426 A. Yes, sir.
Q. Did you know Herbert Haupt prior to June of 1942?
A. Yes.
Q. And did you know Hans Haupt?
A. Yes, sir.
Q. And Erna Haupt, his wife?
A. Yes.
Q. I show you Government's Exhibit 3 for identification, and see if you can tell us who this is?
A. Herbert Haupt.
Q. Speak up loudly so everybody can hear you, please. Calling your attention to the evening of June 22, 1942, at approximately 9 o'clock, were you home that evening?
A. Yes.
Q. Will you tell us what happened?
A. Maybe 9:30 Mr. and Mrs. Haupt and Herbert Haupt came to our house.
Q. These jurors cannot hear you. I am frank to say, I cannot hear either. Will you repeat that, please?
A. When Mr. and Mrs. Haupt and Herbert came to our house, 9:30, about.
Q. Do you mean Hans Haupt, Erna Haupt, and Herbert Haupt? Is that correct?
A. Yes.
Q. Where were you at the time when they first got there?
427 A. We was on the back porch.
Q. Did they come into your home?
A. Yes, sir.
Q. Will you tell us what, if any, conversation there was?
A. Well——
Q. In your home, in the presence of Hans Haupt on that occasion?
A. Well, they came on in to say, "Hello." Then they talked about his son, wanted work.
Q. What?

A. With my husband. With my husband, they talked about he wants to go back to work.

Q. Do you recall what was said?

A. Well, they want to say "Hello," to see my husband on business when he came in.

Q. Into the factory, do you mean?

A. Yes, sir.

Q. Did anyone ask Herbe where he had been?

A. My husband said, "Whe you come from?"

Q. Yes; what did he say?

A. He came from Mexico.

Q. Did he say what he had been doing in Mexico?

Mr. BERTRAM. I object to leading the witness.

Mr. FINN. What further did he say? Excuse it. I will withdraw the question.

The COURT. Sustained.

428 By Mr. FINN:

Q. What further did he say?

A. He was in Mexico, and he worked hard, and he liked it there.

Q. Do you recall him saying anything else as to where he had been?

A. No.

Q. To refresh your recollection, was there anything said on the subject of Florida?

A. Florida; no.

Q. Florida?

A. No.

Q. Was there anything said on the subject of a suit that had been purchased?

A. Yes; he had a nice suit. He had a nice suit, and he said that he just bought it.

Mr. FINN. I think that is all with this witness.

Mr. WARNHOLTZ. No cross-examination.

Mr. FINN. I think that is all.

No cross-examination.

(Witness excused.)

429 LORRAINE DEMMLER, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct examination by Mr. FINN:

Q. Will you state your name, please?

A. Lorraine Demmler.

Will you speak loudly and distinctly? It is very difficult
. Will you speak up loudly? Will you kindly spell your
or the court and for the court reporter?
he first name is L-o-r-r-a-i-n-e.
COURT. And the last name is what?
WITNESS. D-e-m-m-l-e-r.
By Mr. FINN:
Where do you live, Miss Demmler?
545 Oakenwald.
That is your business or occupation?
am an elevator operator at Marshall Field.
Where did you live in June of 1942?
Well, I lived in several places then.
Well, let us go back. How long did you live at 4545 Oaken-
venue?
Almost three years.
rior to that time, where did you live?
A. 7605 Peoria.
Q. And with whom did you live at that place?
A. Miss Irene Wergin.
she the daughter of Otto and Kate Wergin?
s, sir; she is.
ow long did you live at that address with her?
bout a month; maybe a little more.
ior to that, where did you live?
e were staying at the Hallwood Hotel.
e Hallwood Hotel?
s.
re you with Miss Wergin on that occasion?
s; I was.
or to that, where did you live?
6 South Wood.
en did you first move into 5416 South Wood Street?
ll, that was about two weeks before Easter of 1942.
u say—who lived at 5416 South Wood Street at that

and Mrs. Wergin and Miss Wergin.
you continue living with the Wergins from that time—
ou said around Easter——
, sir.
m that time up until a short time before the events in
tment?
A. Yes, sir.
Mr. WARNHOLTZ. That is——

By Mr. FINN:

Q. When did you first move out of 5416 South Wood Street?

A. Well, I guess Miss Wergin and I left there about the latter part of July, the latter part of July.

Q. And you continued to live with her for some time?

A. Yes.

Q. How long had you known the Wergin family prior to June of 1942?

A. Well, I had known Mr. and Mrs. Wergin since 1937.

Q. How long had you known Irene or Wolfgang Wergin?

A. Wolfgang, I went through school, from about fourth grade up.

Q. By the way, what nationality are you?

A. I am German descent, sir.

Q. Did you continue to be friendly with Wolfgang and his sister?

A. Yes; I did.

Q. And did you move in with the family?

A. Yes.

Q. Did you live in their apartment?

A. Yes; I did.

Q. Was it an apartment or was it a house?

A. No; it was an apartment building. There were two
432 stories to it. There was a family upstairs and the Wergins had the first floor.

Q. Will you keep your voice up, please?

A. Yes.

Q. Where was your room located in the Wergin home?

A. It was located right off the dining room.

Q. By the way, when you first moved into the Wergin home, was Wolfgang there?

A. No; he was not.

Mr. WARNHOLTZ. Just a moment, please. I object to this question, because I do not see the relevancy of it. Haupts were not present, and they have not been connected with this.

Mr. FINN. Your Honor, this is part of the circumstances of this thing.

The COURT. Overruled.

By Mr. FINN:

Q. Calling your attention to Sunday, June 21, 1942, at around 1 a. m., did you go to the Wergin home, or to your room there in the Wergins?

Yes; I did.

Q. What time did you leave the home the evening prior?

A. I must have left about 8:30.

Q. You were gone until what time?
A. Until about 1:15.
Q. When you came, did you come home alone, or accompanied by someone else?
433 A. No; I came home with a friend of mine.
Q. Did he come into the house or not?
A. No; he did not.
Q. Will you just tell us what happened when you came there to the door?
A. Well, we drove up to the house. Then I went up. I went to open the door and Mrs. Wergin opened the door for me. Do you want me to go on?
Q. Did you go in the door after she had opened the door?
A. Yes, I did.
Q. Was Hans Haupt, the defendant, there?
A. Yes, he was.
Q. Who else was there besides Hans Haupt?
A. There was Mr. Haupt, Mrs. Haupt, and Herbert Haupt.
Q. Will you point out the defendant to us in the courtroom?
A. That is the gentleman sitting over there at the table, with the dark suit.

Mr. FINN. Let the record show the witness has identified the defendant.

Q. Had you ever met Herbert Haupt?
A. No; I had not.
Q. Did you know Hans Haupt before that?
A. Yes; I did.
434 Q. Had you met him prior to that time?
A. Oh, yes.
Q. Was Erna Haupt there also that evening?
A. Yes; she was there also.
Q. As you came in the door, just where were these people sitting?
A. Well, as you came into the—really, into the parlor, you immediately see a club chair in the corner; that is where Herbert Haupt was sitting. Then, to my left, on the sofa, that was thrown across the windows, was Mr. and Mrs. Haupt.
Q. By the way, what were your relations with the Wergins? Were you friendly with them? How did they treat you, as a roomer, or how?
A. No, sir. They practically treated me as their own daughter.
Q. Will you describe, then, in detail, just what happened when you stepped into the room there, where the Haupts were located?
A. Well, when I walked into the room, Mrs. Wergin stated, "It is early."
I said, "Yes."

Then I walked into the parlor, and from there right to the dining room. I laid the newspapers down, and then Mrs.
435 Wergin was standing right alongside of me. She says, "Lorraine, I want you to meet a friend of ours."

And with that, Herbert Haupt stood up and he said, "How do you do".

I said, "How do you do."

Then he sat down.

Q. Did anyone say, "This is Herbert Haupt," or introduce him by name to you?

A. No; they did not.

Mr. WARNHOLTZ. If your Honor please, that is leading, and I object to it continuing.

Mr. FINN. I do not believe it is a leading question, your Honor, and the answer may be in the alternative, one way or the other. It does not suggest an answer to the witness.

The COURT. Yes; that is true. In other words, a better way would be to ask her what was said or done at that time or place.

By Mr. FINN:

Q. I will ask you this: Was there any further introduction to you of this young man, except what you testified to?

A. Just previous to that——

Q. "This is a friend of ours"?

Mr. WARNHOLTZ. That is objected to on the same grounds,
436 your Honor. It is just as leading as the other questions.

The COURT. Sustained.

By Mr. FINN:

Q. Will you just tell us what happened after that, Miss Demmler?

A. Well, after I paid the papers down on the table, I went into the room, freshened up, and when I came back into the parlor, Herbert Haupt was still there, remained in the club chair, and Mr. and Mrs. Haupt were on the sofa with Mrs. Wergin.

Q. What were they doing there, if you noticed?

A. Well, they were talki[illegible] as I came into the room.

Q. All right, just what happened then?

A. Then I walked in and I looked at Mrs. Haupt and I said to Mrs. Haupt: "From now on when you telephone do not talk in German, because I do not understand it," and with that Herbert Haupt butted in and he said, "Do you not understand German?" I said, "I do not understand."

Q. What else did he say, if anything?

A. That was all that he said to me. That was all that he said then.

Q. What then happened, Miss Demmler?

A. Well, there was just the usual conversation between us there. Then Mrs. Wergin got up to go into the kitchen to make
437 some more drinks. Then Herbert Haupt got up and went in there. That left me in the parlor with Mr. and Mrs. Haupt.

Q. Could you see from your position, where you were sitting in the parlor, into the kitchen?

A. Yes; by leaning forward, leaning over my right shoulder, I could look directly into the kitchen.

Q. You remained—all right. Did you remain in there with Hans Haupt?

A. Yes; and Mrs. Haupt.

Q. Will you tell us just what took place while you were there?

A. Well, the three of us sat then, and then Mrs. Haupt had been glancing through the newspaper. Then she said, "I have got—" she said, "I am rather tired." Then she got up. She excused herself and went into the washroom. That left Mr. Haupt and I alone.

Q. Just what was said or done then?

A. Mr. Haupt began to tell me what he was like in his youth when he came to America. Then he says to me—he started to look in his pocket, and he said, "I believe I left my cigarettes in my jacket."

Q. By the way, what position was he sitting in at that time?

A. Well, he was sitting on the sofa, and he could look
438 directly down the hallway into the kitchen, up to his right.

Q. Did he remain sitting on the sofa, the same position?

A. No, sir. He said to me, "I—" Well, he was looking rather forward, toward the kitchen, looking back and forward in there.

Q. Yes?

A. Then he said he was going to get up and get some cigarettes, and I said, "Mr. Haupt, your cigarettes are on the table." And we dickered back and forth because both—as a matter of fact, were the same brand, that they were his and not mine. I told him, "No, they are not mine. Mine are here."

Q. Herbert meanwhile was out in the kitchen?

A. In the meantime I hear Mrs. Haupt leave the washroom and go into the kitchen.

Q. All right. Now, did Herbert come back into the parlor eventually?

A. Yes; he did.

Q. Will you describe what took place there?

A. Then he came back in again, called Mr. Haupt a word in German that sounded like "Father" or it sounded more like "Father," or something similar to that.

Q. Yes?

A. Then he said, "I think we had better be getting home."

439 Mr. Haupt said, "No, let us wait for Otto."

Q. Was Mr. Wergin there at the house yet that evening?

A. No.

Q. Will you now tell us what took place then?

A. Well, then, Mrs. Haupt and Mrs. Wergin came into the parlor. Mrs. Wergin asked me to set the table. I got up and went in the kitchen, to get ready to set the dining room table, leaving them, and they sat in the parlor.

Q. Will you describe how they were sitting in the parlor? When you talk of them, who do you mean?

A. Mr. and Mrs. Haupt, Herbert Haupt, Mrs. Wergin.

Q. Where were they sitting?

A. Mr. and Mrs. Haupt sat on the sofa. Herbert Haupt was sitting on the arm of the sofa. Mrs. Haupt was sitting in the club chair, that pull chair, she was sitting on the edge of it. They were grouped together around the coffee table, talking rather softly.

Q. Talking loudly or softly?

A. Talking rather softly.

Q. Could you hear anything at all that was said?

A. Well, I could distinguish they were talking in German, but I could not have understood them anyway, outside of the fact they were talking in German.

440 Q. Eventually, did you sit down at the table?

A. Yes, sir; we did.

Q. Will you tell us what took place there at the table?

A. When we were seated at the table, Mr. Haupt was at the long end of the table, and Mrs. Wergin at the other, and to my left was Herbert and across from us was Mrs. Haupt. Do you want the detail of the conversation?

Q. Yes.

A. I commented to Erna that the Wergins had given me a gift for my birthday, and I also commented on Mr. Willumeit, because his story was in the paper shortly before that.

Q. This is part of the conversation?

Mr. BERTRAM. It was a matter of explanation, not responsive to the question.

By Mr. FINN:

Q. Just tell us what was said, no explanation here, just tell us what was said, if you will, please.

A. Anyway, I said I was surprised, because he seemed to be such a nice man.

Q. Who?

A. Dr. Willumeit.

Q. Yes.

A. So then Herbert turned and he looked at me, and he said, "Do you not know he was a very dangerous character?"

441 Q. Yes. Did he say why he was dangerous?

Mr. BERTRAM. Objected to.

A. "Do you not know he will blow us up?"

By Mr. FISS:

Q. What is that?

A. "Do your not know *He* blow us all to pieces?"

Q. Yes.

A. That is all that was said about him. Mrs. Haupt started talking German. Then she looked at me and she started to laugh, and she said to me, "So sorry, Lorraine. I forgot you do not understand German. It was just talking about my operation, when I came out of the ether, the first thing I saw Herbert."

Immediately, Mrs. Wergin spoke up to Mrs. Haupt, "Won't you have another piece of cake?" Mrs. Haupt already had another piece. She said, "No."

Then after a little while after that, Mr. Wergin came in.

Q. Do you recall anything else that took place there at the table, any other conversation that took place at the table, there? To refresh your memory, was there any conversation about "Mutti"?

A. That was when they were talking about this operation business, and then they offered cake to Mrs. Haupt, and she

442 said, "If you will excuse me, I want to tell this little incident, so funny, it does sound funny in the German."

So Herbert called her "Mutti." Then Mrs. Haupt laughed. She said, "All the children call me 'Mutti' just like you call Mrs. Wergin 'Mutti'."

Q. What does "Mutti" mean in German?

A. Well, that is a name for mother, just like "Mom" or something similar to that.

Q. Now, some time later, did Mr. Wergin come in?

A. Yes; he did.

Q. Will you tell us, were you all there at that time?

A. Yes.

Q. Was Hans Haupt still there?

A. Yes; he was.

Q. Herbert?

A. Yes.

Q. His mother?

A. Yes.

Q. When Mr. Wergin—did he come directly into the house or remain outside?

A. He remained outside.

Q. Will you just tell us what happened when he came?

A. Well, I heard him come in, and he had several of the instruments. He played the drums, and he has a lot of grips. He always laid one against the door, to keep it open. Mrs. Wergin and I went out to help him.

443 Q. Did you remain in front of the house with the car, or did you go back in?

A. Well, I kept coming back in with the different pieces of the drum sets, while Mrs. Wergin stood out there talking to Mr. Wergin.

Q. Did Mr. Wergin eventually come into the room?

A. Yes, sir, he did.

Q. Tell us what took place there.

A. Yes.

Q. Was Hans Haupt there?

A. Yes.

Q. Tell us where they went.

A. Mr. Haupt, Mrs. Haupt and Herbert Haupt sat at the dining room table and Mr. Wergin walked into the parlor and stood there, took off his jacket, looked at Herbert, and Mr. Wergin said, "Well, I have not seen you for a long time."

Q. Did Mr. Wergin, or did not Mr. Wergin mention Herbert's name?

A. No; he did not.

Mr. WARNHOLTZ. That is objected to as leading, your Honor. I wish they would really stop continuing——

The COURT. Sustained.

Mr. WARNHOLTZ. The conversation should be related.

The COURT. Sustained. Do not lead her.

By Mr. FINN:

Q. Just tell us what he said then, all that he said that you remember.

444 A. Well, he looked at Herbert and he said to him, "Well I have not seen you for a long time."

Q. Speak up so we can hear you. The streetcars go by and we cannot hear you.

A. He looked at Herbert and he said—took off his jacket and he said: "Well, I have not seen you for a long time."

Then I took his jacket, and I hung it up in the closet. When I came back Mr. Wergin had taken my seat at the table.

So Mr. Haupt had mentioned the fact that Mr. Wergin—it was my seat. I said that was all right, I was going to bed anyway.

Q. Did you thereafter go to bed?

A. Yes, sir; I did.

Q. When you left there, where were these people?

A. In the living room, do you mean?
Q. Yes.
A. They were still seated at the table.
Q. Did you go to sleep right away or no?
A. No; I could not sleep.
Q. Do you know whether or not your door—did your door close entirely or not?
A. No; that door never did close. It just stayed just a fraction of an inch open.
445 Q. Do you know whether they remained at the dining room table, or where they went?
A. Well, eventually they left, because the lights went out. I could see that the light was not around my door.
Q. Meaning they left where?
A. The dining room.
Q. Do you know where they went?
A. Yes. I could distinguish their footsteps. They walked into the parlor.
Q. How long did they remain in the parlor, as far as you know.
A. As far as I know, it would be about an hour, or half an hour—an hour and a half or so.
Q. Could you hear any conversation or not?
A. No; I could not.
Q. How do you know they remained there for that period of time?
A. Because I could not sleep, and then all of a sudden I finally heard them bidding good night. You see, the hallway was right in back of my room. Then I could hear them talking, saying good night. Then I knew that they had left, and then I got up.
Q. You say you got up?
A. Yes, I did.
Q. Approximately what time was it?
446 A. That was rather—I was rather curious because I could not sleep. I was curious about the time, to know what was wrong with me.
Mr. Bertram. I object to that.
Mr. Finn. Tell us what time it was.
The Witness. It is about four o'clock, or four-thirty.
Q. At any time—did you prepare the meal for them there?
A. Yes; I did.
Q. At any time while you were going to and from the kitchen, to the dining room, did you see what they were doing?
A. Yes; they were sitting in the parlor, grouped around this coffee table.

Q. Could you hear any of the conversation?

A. No; all I could hear was they were talking in soft tones, and from what I could hear here and there, it was all in German.

Q. I will show you Government's Exhibit 3 for identification, and ask you if you can tell us what that is.

A. That is Herbert Haupt.

Q. Is that the young man who was in the Wergin home that evening?

A. Yes, sir.

447 Mr. FINN. I think that is all with this witness.

Cross-examination by Mr. WARNHOLTZ:

Q. Miss Demmler, did you observe whether or not Mr. Haupt, that is Hans Max Haupt, was quite sleepy that evening, or was he wide awake?

A. No, sir; he was not sleepy, sir.

Q. Do you remember at about what time Mr. Wergin, the Otto you referred to, or the man you referred to as Otto, actually came home that evening, or rather, morning. I would say this was from Sunday—from Saturday to Sunday morning?

A. Yes, sir.

Q. What time was it?

A. I would say about a quarter to three, sir.

Mr. WARNHOLTZ. That is all. Thank you.

The COURT. Anything further, Mr. Finn?

Mr. FINN. No, your Honor. Thank you, Miss Demmler.

(Witness excused.)

448 MILDRED GORDON, called as a witness on behalf of the Government, after having been first duly sworn, testified as follows:

Direct examination by Mr. HURLEY:

Q. Will you state your name?

A. Mildred Gordon.

Q. That is spelled G-o-r-d-o-n; is that correct?

A. Yes.

Q. You will have to speak so loudly so that all of us in the jury box can hear you, Miss Gordon.—Where do you live?

A. 6065 North Marmora.

Q. Are you employed?

A. Yes, sir.

Q. What is the nature of your employment?

A. I am clerk at Local Draft Board.

Q. Clerk at the Local Draft Board?

A. Yes.

Q. Where is the Draft Board located?

A. Draft Board No. 66, at 563 Diversey Parkway.
Q. How long have you been a clerk for that Draft Board?
A. Since June 1, 1942.
Q. Were you on duty on June 22, 1942?
A. Yes, sir.
Q. You say you were on duty?
A. Yes, sir.
Q. At that office, at the address there you have indicated; is that right?
449 A. Yes, sir.
Q. I show you Government Exhibit 3 in evidence, and ask you if you can tell us who that person is, or if you saw that person at your place of employment at the date you have indicated?
A. Yes, sir.
Q. At about what time did you see Herbert Haupt at that address that day?
A. Well, I cannot remember exactly. I think it was about noon or just before.
Q. What, if anything, did he do when he came into the office?
A. Well, he came in and asked to be registered for the draft.
Mr. HURLEY. Will you mark this for identification "Government's Exhibits 52 and 53"?
(The documents produced by counsel were marked for identification "Government's Exhibits 52 and 53.")

By Mr. HURLEY:

Q. I show you a document marked "Government's Exhibit 52" for identification, and ask you who made out that card?
A. Yes, sir; I did.
Q. Speak up, so we can all hear you.
A. I did.
Q. On what date?
A. On June 22, 1942.
450 Q. And from whom did you get the information that you placed on that card?
A. From Herbert Haupt.
Q. Who placed the signature of Herbert Haupt on the end of that Exhibit 52 for identification?
A. Herbert Haupt.
Q. Was that done in your presence?
A. Yes, sir.
Q. Did you fill in the typewritten material on the reverse side of Government's Exhibit 52 for identification?
A. Yes, sir; I did.
Q. I show you Government's Exhibit 53 for identification.
A. That is the registration card.

Q. Who placed the material that is written on that card there?
A. I did.
Q. Will you speak up so that we can all hear you?
A. Yes.
Q. On what date did you do that?
A. On June 22, 1942.
Q. And from whom did you get the information which you placed on the card?
A. From Herbert Haupt.
Q. I show you a signature at the bottom of the card,
451 Herbert Haupt. Who placed that signature there?
A. Herbert Haupt.
Q. Was there any further information placed upon the reverse side of Government's Exhibit 53 for identification?
A. Yes; there is a description of the registrant.
Q. Did you sign that registration card?
A. I did.
Q. Was there any other notation made there at that same time, on the same date, while Herbert Haupt was at the Draft Board, where you were employed?
A. Yes; there was a note, with the reason for his delinquent registration.
Q. Did he tell you why he had not registered prior to that time?
A. Yes, sir; he did.
Q. Did you make a record of that at the time?
A. I did.
Q. That is dated 6-22-42; is that right?
A. That is right.
Q. What reason did he give you, Miss Gordon?
A. He said he had been out of the country for a year, mining gold in Mexico.
Q. Did he say when he had left the country?
452 A. He did not give the exact date, just about a year previous.
Q. That would be in June of 1941; is that correct?
A. Yes.
Q. I show you two documents, Government's Exhibits 52 and 53, were they made by you in the regular course of your employment as a clerk for——
A. Yes, sir.
Q. For Local Draft Board No. 66? Is that right?
A. Yes.
Mr. HURLEY. Cross-examine.
Mr. WARNHOLTZ. No cross-examination.
No cross-examination.
(Witness excused.)

VINCENT CHRISTOPHER FARRELL, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct examination by Mr. HURLEY:

Q. Will you state your name?

A. Vincent Christopher Farrell.

Q. Where do you live, Mr. Farrell?

A. Well, at the present time, 600 Diversey Parkway, the Rienzi Hotel.

Q. During the month of June 1942, were you employed
453 by the Warner Motor Sales?

A. I was.

Q. Where was that place of business located?

A. 958 Diversey Parkway, Chicago.

Q. What was the nature of your employment?

A. Well, I was salesman, automobile salesman, new and used cars.

Q. What car was that company the agent for?

A. Well, we were agents for the Pontiac, made by General Motors.

Q. The Pontiac car?

A. Yes, sir.

Q. Were you on duty at the place of business of the Warner Motor Sales at 958 Diversey Parkway, on the evening of June 23, 1942?

A. I was.

Q. Did anyone come into your place of business that evening?

A. Well, I was alone, waiting for the manager to return from dinner.

Q. Did any prospective customer come in?

A. About six o'clock there were two gentlemen that came in. I approached them, and they said they wanted to buy a good late model used car.

Q. I show you Government's Exhibit 3 in evidence, a picture of Herbert Haupt, and ask you if you saw him on that evening.

454 A. He was with this other gentleman.

Q. Do you see that other gentleman here in the courtroom?

A. This is him, right here.

Mr. HURLEY. Indicating the defendant, Hans Haupt.

Q. What time did you say they came into the Warner Motor Sales?

A. Well, it was about six o'clock in the evening.

Q. About six o'clock in the evening?

A. Yes.

Q. Did the man, Hans Haupt, whom you have indicated here, Hans Haupt, say anything to you?

A. Well, I asked if I could be of help to him, and he said, yes, he wanted to buy a good used late model car. So I showed him a number of cars, three or four, and finally, I showed him a 1941 Pontiac 6, super coupe, a black car. That was one of the best cars that we have ever had in our place, as a used car, and I showed him the durability of the car, the roomy interior, the large rear trunk, the excellent tires.

He seemed to like this car very much. Said he wanted to know if he could buy it on a time-payment. I said, "Well, what have you got to trade in?"

455 He said, "Well, I have a car," but he says, "I do not intend to trade it in. It is for my son."

Q. What was for his son?

A. This car that he was buying. So I said, "You can buy it on time payments."

He wanted to know how much was required to pay down.

So I said, "If you will step over to my desk, we will set up the deal. I will show you just the required down payment, and the monthly payment, to the insurance, and so forth."

Q. What was the price of the car?

A. $1,045.

Q. $1,045?

A. $1,045. I was going to charge tax, but they objected to paying tax, and so, they were giving a good price for the car, so we have to pay that anyway. We have to pay the tax.

Q. Was there any decision made as to the purchase of the car that evening?

A. Well, I set up the deal——

Mr. HURLEY. May these be marked for identification?

(The documents produced by counsel marked for identification "Government's Exhibits 54 and 55.")

456 Mr. HURLEY. Q. Go ahead.

A. Well, I set the deal up to read $1,045 for the car, and they wanted to know if they could put $10 down, and I said they could. They said, "We will have the money, and we will have to bring in some cash."

Mr. WARNHOLTZ. I object to this, "they said" or "they did." I should like it brought out as to who said what.

A. Hans Haupt wanted to know how much he would have to put down for the car. I said, "That is approximately half the price of the car."

He wanted to know if he could put down $10 deposit and come in the next day, the following day, and put down the balance.

I said that would be perfectly satisfactory.

So I wrote up the financial statement, and asked his name, and he told me, "Hans Haupt."

He introduced me to his son as Herbert Haupt. I filled out the financial statement complete, to the Finance Company, and I wrote up the order, and he signed the order, and he put down, he put down a $10 deposit down on the car.

And finally, Herbert wanted to know if I could get his license for him, the driver's license. I said that I thought that I could.

457 He wanted to know if I could get the city license. At that time, I think we got it at half price, by reason of the time of the year, by reason of the fact that it was half a year, so he paid me $9.50 for the city license and the driver's license—the city license. Herbert Haupt put that down.

In the meantime, the manager came in.

Q. Who is the manager?

A. His name is Phil Vinson.

Q. Was he the manager of the Warner Motor Sales?

A. He was sales manager of the Warner Motor Sales. There was just he and I working there at the time by reason of the ravages of war. I even know whether the rest of the salesmen got business. We had no cars to sell, hardly.

Q. What time was it that Mr. Vinson came in?

A. He came in approximately 7 o'clock; left about 5 and came back about 7. I called him over and introduced him to Hans Haupt and to Herbert Haupt the son; and told them that they had bought this car, put $10 deposit and would drop in the following day and pay the balance.

He said it looked like a good order, looked ve good.

458 Q. I show you Government's Exhibit 54 for identification, and ask you to look at that, Mr. Farrell.

A. Yes; that is the order.

Q. For whom was that prepared?

A. Well, I wrote this up. I prepared the order.

Q. Was the signature of Hans Haupt placed there?

A. That is right.

Q. In your presence?

A. Yes.

Q. Was that placed there by this defendant, whom you have pointed out in the courtroom?

A. That is right.

Q. And the address, 2234 Fremont, was that written?

A. I wrote that and I had him sign it. That is the custom. I usually do that.

Q. How long did the defendant, Hans Haupt and Herbert Haupt remain in your place of business that night?

A. I venture to say they were there about an hour and a half. I had quite a talk with both of them. The younger man, I called him up the following morning. I called the Haupt home the following morning to tell them that we required $50 additional down payment.

Q. Just a moment. In reference to this financial statement, did you state you took a financial statement from him?

A. Yes.

Q. That information was given to you by whom?

459 A. That was given to me by Hans Haupt.

Q. Were there any references given?

A. There were references given.

Q. I did not hear the answer.

A. There were references given.

Q. Who gave those references?

A. Hans Haupt.

Q. Whose references were they?

A. Well, business associates and friends.

Q. Of whom?

A. Of Hans Haupt.

Q. Did you see any one of these individuals, say, at a later time?

A. Well, I called them up the following morning, called up their home, and I advised them that it was necessary——

Q. Who did you talk to, if you recall?

A. Well, I recognized Herbert Haupt's voice by reason of his being the younger voice, a little higher pitched. I talked to him quite a bit the day before. It was not so hard to recognize his voice.

So I told him that it would be necessary to bring in an additional $50 down payment, and he said, "All right."

It struck me a little queer, because usually where a father buys a young man——

Mr. WARNHOLTZ. That is objected to.

460 The COURT. Sustained.

Mr. HURLEY. Never mind that.

Q. Did Hans Haupt and Herbert Haupt come into your place of business at a later time than the one you have described?

A. They came in the following afternoon and brought in $405 in fives, tens and twenties, and it was about three fifty dollar bills in there.

Q. Was that deposited on the following day, then?

A. Yes: that is right.

Q. They were in there about the purchase of the automobile, is that correct?

A. That is right.

Q. And was there any security or notes given with reference to the car?

A. Well, I understand that later——

Q. No. Do you know whether or not there were?

A. No, not at that particular time, not right then. Well, that day, of course, they answered the usual financial—they gave the usual finance notes, of course.

Q. Who signed them?

A. Hans Haupt.

Q. Those were finance notes, you say?

A. Finance notes; yes.

Q. What did they amount to, do you know, the total?

461 A. Well, as I recall, I had not——

Q. No.

A. It is close to $630, I believe, the balance due.

Q. Was there any contract executed?

A. Well, the usual finance contract. The notes, as you might call them, terms. We refer to it as a contract. That was for the Finance Company.

Q. When was that executed.

A. That was signed at the time.

Q. The first night or the following day?

A. The first night.

Q. Who signed it?

A. Well, Hans Haupt signed that.

Q. I show you Government's Exhibit 55 for identification——

The COURT. How much longer will this take?

Mr. HURLEY. It may take a little while.

The COURT. We will recess at this time, ladies and gentlemen, until 2 o'clock.

In the meantime, do not discuss this case with anyone, nor permit anyone to discuss it with you, and return at 2 o'clock.

You may go and return at 2 o'clock.

(Whereupon a recess was taken to 2 o'clock p. m. of the same day, Monday, May 29, 1944.)

462 In the District Court of the United States for the Northern District of Illinois, Eastern Division, at Chicago

UNITED STATES OF AMERICA

vs.

HANS MAX HAUPT

Before Hon. JOHN P. BARNES, Judge, and a Jury

Monday, May 29, 1944, 2:00 o'clock P. M.

Parties met pursuant to a recess.

Counsel present: Mr. J. Albert Woll, United States District Attorney for the Northern District of Illinois, Eastern Division, at Chicago, and Mr. Earle C. Hurley, and Mr. Richard G. Finn, Assistant United States District Attorneys for the Northern District of Illinois, Eastern Division, at Chicago, appeared for the United States of America; Messrs. Paul A. E. Warnholtz, Frederick J. Bertram, appeared for the Defendant.

* * * * * *

463 The COURT. Bring in the Jury.

VINCENT CHRISTOPHER FARRELL, resumes the stand for further examination, after having been previously sworn, testified as follows:

Direct examination (resumed) by Mr. HURLEY:

Q. You are the same Vincent Christopher Farrell who was on the witness stand when we adjourned for lunch, is that correct?

A. I am.

Q. Now, going back to the first evening of June 23, 1942, when you stated that the manager of the Warner Motor Sales came in?

A. That is right.

Q. What was his first name?

A. Phillip Vinson.

Q. And spell that out, or you did spell that out at that time, is that correct?

A. Yes.

Q. Who paid the money on this 1941 Pontiac coupe on the first night?

A. Hans Haupt.

Q. How much did he pay?

A. He paid, as near as I remember, $405.

464 Q. The first night?

A. No; $10 down on the first night.

Q. And was there money paid the following night?

A. The following evening they came in and he paid $405.

Q. By "he" you mean whom?

A. Hans Haupt.

Q. About what time did Hans Haupt come in on the night of the 24th of June?

A. Well, I am not absolutely certain about that. It seems to me it was about around 5 o'clock, but I am not positive about that. It might have been a little later.

Q. Was Mr. Vinson there at that time, too?

A. He was there, yes.

Q. Now, showing you again Government's Exhibit 54, which you testified is in your handwriting with the exception of the signature; Hans Haupt, I will ask you whether or not you prepared that document in the usual course of business as an employe of the Warner Motor Company?

A. I did.

Q. And it is true and correct; is that right?

A. It is; yes, sir.

Q. And reflects the transaction as it took place at this time?

465 A. Yes; there is a little correction made there by Mr. Vinson, but sometimes a little correction is made for some such reason or another.

Q. I will ask you why or what that correction refers to?

A. Well, I say, or I see that it goes, the balance here, of $325 and he showed he changed that to $405.

Q. And that $405 was the amount you stated Hans Haupt paid at that sales agency on June 24th, 1942, is that correct?

A. Yes; that is right.

Q. And that Warner Motor Sales is located in the City of Chicago, is it not?

A. 958 Diversey Parkway, Chicago.

Q. And was that car delivered?

A. That car was delivered the following day. He made the payment of what I have there, $405, it was made on the 24th.

Mr. HURLEY. Cross-examine.

Cross-examination by Mr. WARNHOLTZ:

Q. Mr. Farrell, did Mr. Haupt, Hans Haupt, when he introduced himself, immediately give you the name of Hans Haupt?

A. No. I showed him a number of cars before he
466 decided on the one that he bought, and when he asked me whether he could buy it or not on payments, so much a month, I told him he could, I asked him to step over to the desk, and I got his name then when I filled out the financial statement. Prior to that, I didn't know his name.

Q. But he, himself, then gave you the name Hans Haupt, and no other name?

A. He gave me Hans Max Haupt, and I wrote that on the financial statement.

Q. But no other name?

A. No other name.

Q. And he introduced his boy as being Herbert Haupt?

A. Herbert.

Q. This matter of procuring a driver's license and State license upon request of Herbert Haupt, that is quite a customary matter, is it not, when someone purchases a car?

A. No; it was rather unusual, because it was most usual, most customary to have their driver's licenses.

Q. No, no; I am asking you, is that quite customary there when somebody purchases a car to request you to send for the driver's license and the State license?

A. No; it isn't customary, but it is done.

Q. Have you ever sold any cars?

A. Yes.

467 Q. The morning after the purchase of this car, did you call up the Haupt home?

A. That is right.

Q. And you had quite a long conversation on the telephone, did you not?

A. Not very long.

Q. Say yes or no.

A. No.

Q. Isn't it a fact, Mr. Farrell, that the party answering talked to you quite a while, yes or no?

A. No.

Q. Just what did you say and what did he say, just a word, right?

A. I recognized his voice.

Q. I am asking that question; will you please answer: Is that all he said?

A. Right.

Q. That is all he said?

A. That is all he said.

Q. That one word, and you recognized his voice?

A. I did recognize his voice, but——

Mr. WARNHOLTZ. You have answered.

Q. You have never talked to Herbert Haupt before except the evening preceding this telephone conversation; is that right?

A. Talked about one hour and a half——

468 Q. I ask you if you ever talked to him before preceding this morning.

A. No.

Mr. WARNHOLTZ. That is all. Thank you.

Mr. HURLEY. That is all.

PHILLIP NEWELL VINSON, called as a witness on behalf of the Government, after having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. FINN:

Q. Will you state your name?

A. Phillip Newell Vinson.

Q. Spell your name for the reporter, please.

A. V-i-n-s-o-n.

Q. Phillip Newell Vinson?

A. Yes, sir.

Q. Where do you live, Mr. Vinson?

A. 3622 North Oriole.

Q. Oriole Avenue?

A. Yes, sir.

Q. The acoustics here are poor, and if you will just speak up a little louder, if you will, please.

A. Yes, sir.

Q. What is your business or work or occupation, sir?

A. I am general manager of an automobile company,
469 the Warner Motor Sales.

Q. Where is the Warner Motor Sales Company located?

A. 958 Diversey.

Q. Is that in the City of Chicago?

A. Yes.

Q. How long have you been engaged in busines as the manager of the Warner Motor Sales Company of Chicago?

A. About three years and ten months.

Q. Were you engaged in that occupation in June of 1942?

A. I was.

Q. Calling your attention to the early evening of June 23, Tuesday, June 23rd, 1942, were you in your place of business on that evening?

A. Yes; I returned from supper about 7 or 7:30.

Q. Now, when you returned from supper, was there anyone else in the showroom besides yourself?

A. Yes; Mr. Vincent Farrell, salesman, was there, with two customers.

Q. Subsequently after your arrival there, did you transact some business with those two customers?

A. Yes; we did.

Q. I will show you Government's Exhibit 3 for identification, and ask you if you can recognize that photograph?

A. Yes; I do.

Q. Can you tell us who it is?

A. That was one of the customers that was in that evening, Mr. Herbert Haupt.

Q. Do you recognize anyone else in this courtroom who was there that evening?

A. I do.

Q. Whom do you recognize?

A. The gentleman over there, Mr. Hans Haupt.

Mr. FINN. Let the record show that the witness indicates the defendant.

Q. Now, will you tell us just what took place on that evening, the first evening?

A. Well, I returned at 7 or 7:30, and Mr. Farrell asked me if I can accept a deal on a 1941 Pontiac, 6-passenger coupe for 1045.

Q. By 1045, you mean $1,045?

A. That is right, yes.

Q. Was that the selling price?

A. That was the selling price.

Q. All right. Tell us what other conversation there was.

A. Well, there was a slight additional charge that should have been put on the car to make a complete deal on the figures, but the price was so close to the asking price, I would accept the deal at $1,045.

Q. What was the other additional expenses you refer to?

A. Figure about 2 percent, around $20 tax that should have been put on top of the $1,045.

Q. Now, will you tell us just what was said by various parties with reference to the car, Hans Haupt, Herbert Haupt, and Mr. Farrell?

A. Mr. Farrell asked whether he could accept the deal on those figures, and I said, "Yes, I would." He said, "I would like to have you meet the gentlemen." And he took me over and introduced MR. Herbert Haupt and Mr. Hans Haupt; they were the purchaser of the car, and they gave him a $10 deposit, and a credit statement.

Q. Just a minute. Do you know who purchased the car?

A. Yes; Hans Haupt.

Q. And was there any conversation as to whether it was a car for Hans, or for someone else?

A. No.

Mr. WARNHOLTZ. I object to that as leading, your Honor.

Mr. FINN. He answered it "No."

The COURT. Sustained.

Mr. WARNHOLTZ. Yes; he said "No."

By Mr. FINN:

Q. You testified at the last trial in this case, did you not?

A. Yes.

Mr. FINN. May I have just a moment, please, your Honor.

Q. Now, what, if any, arrangements were made that evening with reference to this purchase?

A. Well, the only time I observed the Haupts is when I was introduced to them. There was no transaction made with me regarding the car. It was made with the salesman.

Q. Were there any documents signed there that evening?

A. Yes, a deed.

Mr. WARNHOLTZ. That is objected to unless it is done in the presence of this witness. It does not seem to be clear that this witness knows what was written on that. Did you see the document that evening?

A. Yes, sir.

Q. Did you handle it?

A. Yes, sir.

Q. Did you talk to them about it?

A. Yes.

Q. Calling your attention to Government's Exhibit 54 for identification, will you tell us what that is.

473 A. That is a preliminary bill of sale that is given at the time the car is purchased, before the credit statement has been O.K.'d, it is written down. It is a preliminary bill of sale.

Q. Was that signed there that night?

A. Yes, that was.

Q. Was that in your presence?

A. Yes.

Q. And who signed it?

A. Mr. Hans Haupt.

Q. And do you know who put down the money; how much money was put down that evening?

A. Ten dollars.

Q. Who made the $10 deposit?

A. Mr. Hans Haupt made the deposit.

Mr. BERTRAM. The witness testified, he said he didn't know.

Mr. FINN. Is not that a matter for cross-examination?

Mr. BERTRAM. No, I think not.

By Mr. FINN:

Q. Now, was there a credit statement or credit memorandum taken that night?

A. Yes, there was.

Mr. WARNHOLTZ. I object, your Honor, unless the witness was present at the time.

By Mr. FINN:

Q. In whose presence was the credit statement taken that night?

A. It was.

474 Q. In your presence?

A. It was.

Q. Who signed that credit statement?

A. Hans Haupt.

Q. And whose references were given for that credit statement?

A. They were Hans Haupt's.

Q. Now, was there anything further done that evening toward the purchase of this automobile?

A. Oh, the mortgage was signed, and the financial statement was taken by the salesman and turned over to me.

Q. Do you recollect what the terms of this sale were?

A. Well, not exactly. I do know, next day the Finance Company asked $110 more for an additional down payment.

Q. Well, now, calling your attention to the next evening on the 24th day of June 1942, were you present in the salesroom on the occasion?

A. I was; yes.

Q. Will you tell us what happened on that evening?

Mr. WARNHOLTZ. Objected to, unless it is shown it was in the presence of the defendant. This man has been questioned about the salesman.

Mr. FINN. I have got to find out first what happened,

475 and find out whether the defendant was there. I can't put it all in in one question.

Mr. WARNHOLTZ. What happened?

Mr. FINN. If I asked any other question, it would be leading.

Mr. BERTRAM. Who was there?

Mr. WARNHOLTZ. That is right.

Mr. FINN. I suggest if counsel has any objections to make, that he should address his objections to the court rather than argue with me about this matter. After all, your Honor has to rule on the objections.

Q. Calling your attention to the 24th day of June, the next evening, can you tell us whether you were present in the salesroom?

A. I was present in the salesroom; yes.

Q. Did anyone come in the salesroom that evening?

A. Mr. Farrell came to me when I returned.

Q. Were you present when anyone came in that evening?

A. No.

Q. Did you ever at any time see Hans Haupt or Herbert Haupt there the following evening, the 24th?

A. Not that evening; no.

Q. You say the 24th you did not see Hans Haupt and Herbert Haupt there?

A. No.

476 Q. Do you recall testifying at the last trial?

A. Yes.

Mr. BERTRAM. I object, your Honor; you cannot contradict your own witness.

Mr. FINN. I think I have a right to refresh his recollection.

The COURT. Yes.

Mr. FINN. Do you recall these questions being asked you, and you making these answers:

"Question: Calling your attention to the next day, the 24th day of June 1942, did you see either Hans Haupt or Herbert Haupt there that evening?

"Answer: Yes, I did.

"Question: And where did you see them?

"Answer: I saw them in the office together.

"Question: They came in there together, did they?

"Answer: That is right.

"Question: What, if any, conversation did you have with them at that time?

"Answer: None whatsoever.

"Question: Did you see them come in?

"Answer: Yes, sir.

477 "Question: Did you receipt for money that they had put on a down payment?

"Answer: We did."

By Mr. FINN:

Q. Do you recall those questions and answers?

A. I do. I was mixed up in the story. I did not talk to them. I saw them. I saw them come in and I was mixed up when I said I didn't speak to them. I saw them come in. I was there at the time.

Q. About what time was it Hans Haupt and Herbert Haupt came on the evening of June the 24th, 1942?

A. I imagine about the same time as the night before, around 7 or 7:30.

Q. And you said on that occasion you didn't talk to them yourself?

A. No.

Q. Did you receive the money that had been put down?

A. I did.

Q. On that evening?

A. Yes.

Q. Can you tell us how much it was; do you recall how much it was?

A. Well, I believe it was around $470 and a $50 note.

Q. And a $50 note?

A. That is right.

Q. Whose name was on that note?

A. It was Hans Haupt.

478 Q. Do you recall the denominations of the bills you received that evening?

A. They were all fives and tens and twenties, twenty dollar pieces, and there were three fifty dollars, I remember those.

Q. Now, in the regular course of your business, is a correct invoice made whenever there is a purchase made?

A. When a statement is made, an invoice is made at the time.

Q. Did you see the invoice that was made on that evening, June the 24th, with reference to the purchase of this car?

A. I did.

Q. Showing you Government's Exhibit 55 for identification, will you tell us what that is?

A. That is the copy of the bill of sale we keep in our records.

Q. And was that with reference to the purchase of this automobile, this Pontiac automobile, to which you previously referred?

A. That is right.

Q. Was that made in the regular course of your business?

A. Yes.

Q. And is that copy in the same condition there with
479 the exception of these exhibits marked on it on the night that you saw it?

A. It was; yes, sir.

Q. And was Mr. Farrell there that evening?

A. Yes, sir; he was there.

Q. That is the gentleman that just left the courtroom?

A. That is right.

Q. And was he the man who introduced you to Hans Max Haupt and Herbert Haupt the evening before?

A. He was; yes, sir.

Mr. FINN. I think that is all with this witness.

Mr. WARNHOLTZ. May I see the invoices? Thank you.

Mr. FINN. Just so the record may be clear.

Q. Mr. Vinson, in the first statement on the stand, you said you did not see them come in, then you later corrected that.

A. That is correct, I misunderstood. I did not speak to them. I saw them both there. I saw them when they came in the second time.

Cross-examination by Mr. WARNHOLTZ:

Q. Mr. Vinson, I notice on your invoice there was added something for insurance for the automobile, is that a rather unusual feature to have you furnish insurance, or is it customary?

480 A. That is incorporated; that insurance is included.

Q. And that is customary for you to do that?

A. That is right.

Q. And also the financing?

A. That is right.

Q. Then I notice here on a separate slip something about city and state licenses; do you frequently furnish that, too, and add that to the price?

A. Sometimes we do.

Mr. WARNHOLTZ. That is all.

Mr. FINN. That is all.

Mrs. GERDA SAURE, called as a witness by the Government, after having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. HURLEY:

Q. Will you state your name?

A. Mrs. Gerda Saure.

Q. How do you spell your name?

A. S-a-u-r-e.

Q. Your first name, how do you spell that?

A. G-e-r-d-a.

Q. Do you have another name in addition to those two?

A. Formerly known as Mrs. Gerda Melinde.

481 Q. Mrs. Gerda Melinda?

A. That is right.

Q. Where do you live, Mrs. Saure?

A. I live at 1631 Chase Avenue.

Q. In the City of Chicago?

A. That is right.

Q. Where did you live during the month of June 1942?

A. 1752 Albion Avenue.

Q. Did you know a person by the name of Herbert Haupt?

A. I did.

Q. I will show you Government's Exhibit 3, and ask you if that is a photograph of the person you knew as Herbert Haupt?

A. Yes, it is.

Q. When did you first meet Herbert Haupt?

A. Oh, that is approximately about 1939, I believe.

Q. And do you know Hans Haupt?

A. Yes; I met Herbert's folks about a year later.

Q. Do you see Hans Haupt here in the courtroom?

A. Yes, I do.

Q. Will you point him out, please; you point him out where he is?

A. I will have to put my glasses on. Right over there [indicating].

Q. Sitting there at the second table, is that where you are indicating?

A. That is right.

482 Q. Indicating the defendant Hans Haupt. Where was it you first met Herbert Haupt?

A. I don't quite remember. It was at a dance, or at a German picnic; one of the two.

Mr. HURLEY. Speak up louder, please.

The WITNESS. All right.

Q. What is your best recollection as to where it was?

A. I believe it was a picnic at Harm's Park.

Q. Harm's Park?

A. I believe it was.

Q. And did you ever meet him at the Haus Vaterland?

A. Yes; we went there occasionally on Saturday evenings.

Q. Where was that located?

A. On Western and Byron Avenues.

Q. Western and Byron?

A. Yes.

Q. And what Club or persons met there, if you know?

A. Well, it was——

Mr. WARNHOLTZ. I object, your Honor, to the leading question. It seems to me that is immaterial for the purposes of this inquiry, what club met there.

The COURT. What is the materiality of that?

Mr. HURLEY. Showing the contact with different individuals, following it right straight through. If it is leading, I can change the form of the question.

The COURT. Well, change the form of the question.

483 Mr. HURLEY:

Q. How often did you go to the Haus Vaterland?

A. Well, I can't say exactly.

Q. Well, approximately.

A. Well, we went there on Saturday evening to dances.

Q. Who gave the dances, if you know?

A. Different clubs gave those besides the Haus Vaterland itself.

Q. What were some of those clubs?

A. I can't say offhand. I have forgotten.

Q. Well, name a few of them, whatever ones you can think of.

A. One single club, I believe, was Con[redacted]dia.

Q. Any other?

A. That is all I can recall.

Q. Do you know aside from these dances, do you know any other organizations that had its headquarters in the Haus Vaterland?

Mr. WARNHOLTZ. Objected to, your Honor, as being immaterial and it is leading besides.

The COURT. Well, do you expect to connect the defendant with those other organizations, and Herbert Haupt with those other organizations?

Mr. HURLEY. Herbert Haupt.

The COURT. Well, she may answer.

484 The WITNESS. Well, it was known as the Bund. I believe they had dances at the time I first went. I don't know. I just went there because I enjoyed the music and the dancing.

By Mr. HURLEY:

Q. Now, calling your attention to the month of June 1941, did you see Herbert Haupt during that month?

A. 1941?

Q. Yes.

A. That was when he was back in this country.

Q. 1941?

A. Yes; I met him, I believe it was the 23rd of June.

Q. No; in the year 1941 now, before he left?

A. Oh, I see. Yes; I saw him on several occasions.

Q. Do you know where he went, rather, around June 1941?

A. Not outside of where we used to go together.

Q. No; did you see him after that time?

A. No; I didn't.

Q. Did you hear from him?

A. I received a postal card after he had left.

Q. Where was that card from?

A. That was from St. Louis.

Q. And was there anything on the card?

A. He wrote me he was going—he was on his way to California and would be back soon.

485 Q. Had you talked to him before this occasion when he went away, about his leaving the city?

A. He had mentioned on several occasions he wanted to go to Mexico. He mentioned it time and time again. He never mentioned it after that.

Q. Do you know who went with him when he left the city?

A. No, I don't.

Q. Now, after Herbert Haupt left the city of Chicago, in the month of June 1941, when was the next time you saw him?

A. Not until he was back in Chicago the following June.

Q. Now, calling your attention to Tuesday, the 23rd day of June 1942, did you see Mrs. Haupt that day?

A. Yes.

Q. Did you know what her first name was?

A. Erna.

Q. Was she the mother of Herbert Haupt; is that correct?

A. That is right.

Q. Where did you see Mrs. Haupt on that day?

A. She came down to the place where I was working at the time.

Q. Where was that?

A. Bismarck Hotel, in the Beauty Salon.

486 Q. What, if anything, did you do after she came there to that hotel?

Mr. WARNHOLTZ. Objected to, your Honor, on the grounds, not in the presence of Herbert Haupt at that time, and it has not been shown whether Hans Haupt—I mean the defendant.

The COURT. All right, proceed.

By Mr. HURLEY:

Q. Now, what time did you meet Mrs. Erna Haupt on the 23rd day of June 1942?

A. Between one and two o'clock, I believe.

Q. In the afternoon?

A. Yes.

Q. What, if anything, did you do after you met Mrs. Haupt?

A. We had lunch together.

Q. Where did you have lunch?

A. I believe the Triangle Restaurant right across the street from the Bismarck.

Q. Near your place of employment?

A. That is right.

Q. Now, later on that day, did you hear from anyone else?

A. I did.

Q. And as a result of that phone conversation, what happened later that same day?

Mr. WARNHOLTZ. I object to the form of the question: "As a result of a telephone conversation."

487 Mr. HURLEY. Withdraw that.

The COURT. Strike it out.

By Mr. HURLEY:

Q. Did anything happen after that phone conversation?

A. I went up to his house that evening.

Q. Whose house?

A. Herbert Haupt's home; the home of Mr. and Mrs. Haupt.

Q. Where was that located?

A. Fremont Street.

Q. Do you know the address?
A. No, I don't.
Q. 2234 North Fremont?
A. That is quite possible.
Q. About what time did you arrive there?
A. Oh, anywheres between—I believe it must have been around eight or eight-thirty in the evening.
Q. In the evening?
A. Something like that; yes.
Q. Who was there when you arrived at 2234 North Fremont?
A. On arriving there, Mr. and Mrs. Haupt were there.
Q. You have to speak up louder, please.
A. Mr. and Mrs. Haupt were there.
Q. That is the defendant Hans Haupt?
A. That is right.
Q. And Erna Haupt; is that correct?
A. Yes.
Q. Was there anyone else there?
488 A. A gentleman was there I met later on in the evening.
Q. What is his name?
A. I believe the first name is Gus, a fellow I recall at the time.
Q. Do you know whether or not it was Gus Zermer?
A. I believe that is right.
Q. What did you do when you went to the Haupt home that evening?
A. Well, I arrived there and Mr. Haupt told me that Herbert Haupt had gone out to meet me, so Mr. Haupt went out after I arrived, to see if he could catch up with him. Then they came back together.
Q. About what time, then, after you had arrived there did Herbert Haupt and the defendant Hans Haupt come in?
A. Not any more than fifteen or twenty minutes later.
Mr. Hurley. Keep your voice up, if you will, please.
The Witness. All right.
Q. Now, what, if anything, did you do in that interval of time when the defendant went out of the home?
A. Mrs. Haupt prepared something for me to eat.
Q. Something for you to eat?
A. That is right.
489 Q. Now, when the defendant Hans Haupt and Herbert Haupt came back, what, if anything, did you do then?
A. Well, I believe some of the sandwiches she made for me she brought in the living room, and Herbert and I sat in the living room, and I ate the sandwiches.
Q. The defendant Hans Haupt and Erna Haupt and this man Gus Zermer?

A. They were in the kitchen.
Q. They were in the kitchen?
A. That is right.
Q. And how long did you remain in there, in the living room with Herbert Haupt, in the Haupt home at 2234 North Fremont Street, Chicago, Illinois?
A. About two or two and a half hours.
Q. And that would bring it up to about what time?
A. I imagine it was around 10:30 in the evening.
Q. And did you engage in conversation while you were there in the living room?
A. Yes, we did.
Q. What, if anything, did Herbert Haupt say to you at that time?
A. Well, naturally, I asked him where he had been.
Mr. WARNHOLTZ. I object, your Honor, not in the presence of Hans Haupt. It is not material to any of the overt acts charged in the indictment.
490 The COURT. Well, I think on the question before I ruled they were relevant, material, and proper to show the character of the person whom the defendant is alleged to have given aid and comfort, and that will be the ruling now.
Mr. HURLEY. Read the last question.
(Last preceding question read by the reporter.)
The WITNESS. He told me he had been to Mexico.

By Mr. HURLEY:

Q. Did he say anything else, Mrs. Saure?
A. Well, there were personal questions, naturally, why he hadn't written, and I asked him about it, and he said he was busy, he was out there in Mexico, he said, they were looking for gold.
Q. They were mining gold?
A. They were looking for gold, he told me.
Q. Did he mention any other subject other than Mexico?
A. Not that I can think of.
Q. Did he say anything about the Draft Board?
A. I believe I asked him about that, and he said it was already taken care of.
Q. Did he say when it was taken care of?
A. I beg your pardon?
Q. Did he say when it was taken care of?
A. No; I believe he just said it was taken care of—Well,
491 he had registered—I don't remember exactly what he said.
Q. Now, about what time did you leave home that evening; the Haupt home?

A. I believe it was around 10 or 10:30; something like that.
Q. Did anyone go with you?
A. No.
Q. No one at all?
A. No one at all; just Herbert took me home.
Q. That is Herbert Haupt; correct?
A. That is right.
Q. Then Zermer and Mr. and Mrs. Haupt were in the home when you left?
A. That is right.
Q. And how did you get from the Haupt home 2234 North Fremont Avenue to your place of residence?
A. He took me in his own car.
Q. By "he" you mean Herbert Haupt?
A. Yes.
Q. And did you stop anywhere on the way home?
A. Yes; we stopped in a tavern, the "Tenycks" on Ashland Avenue.
Q. That is the name of the tavern?
A. That is right.
Q. How long did you stay there?
A. Oh, about fifteen minutes, I think.
Q. Did you see Herbert Haupt after that evening?
492 A. No, I didn't.
Q. Did you talk to him at any time after that evening?
A. He called me up on the phone a few times, that is, I think about twice, I believe two or three times, and he wanted to make a future date.
Q. Did you make a future date?
A. For the following Saturday.
Q. That was the Saturday of the same week you had seen him on that Tuesday, the 23rd; is that right?
A. That is right.
Q. And what time were you to meet him on Saturday evening?
A. We had not specified any particular time. He was to call me again that Saturday.
Q. Did you see him on Saturday?
A. No, I didn't.
Q. What, if anything, did you do that Saturday evening with reference to that appointment you had?
A. Well, I waited for his call and I didn't hear from him, and I called his mother and his house.
Q. After that phone call, did you do anything?
A. I went out and had dinner downtown.
Q. After that you had your dinner; where, if any place, did you go?

A. I called her again. I don't know exactly where we
493 went. I went to some friends of mine at the time and we had a few drinks after dinner, and then I called Mrs. Haupt again.

Q. Then after you called Mrs. Haupt the second time, did you do anything?

A. Well, we went out some place. I believe I went over to Mrs. Haupt's home later on in the evening.

Q. About what time did you arrive out there?

A. Anywheres between eleven o'clock and twelve o'clock; somewheres around that time.

Q. And who did you see when you went out there on Saturday night?

A. When I went to the house?

Q. When you went to the Haupt house, 2234 Fremont Street?

A. Mr. and Mrs. Haupt were there.

Q. That is the defendant you pointed out here?

A. Yes; and Mr. and Mrs. Wergin.

Q. Mr. and Mrs. Otto Wergin were there?

A. That is right.

Q. Was there anyone else there other than those you have named?

A. Not at the house; no.

Q. That you recall?

A. No.

494 Q. And how long did you remain in the Haupt home that Saturday evening?

A. I remained there all night.

Q. Did you leave together at any time?

A. In the morning we did.

Q. About what time?

A. Well, six or six-thirty; something like that.

Q. Where did you go then?

Mr. WARNHOLTZ. I object to this, your Honor. It seems that neither Herbert Haupt is involved nor Hans Haupt, and it seems to me there is no connection between the questions of counsel and those made in the indictment.

Mr HURLEY. I expect to follow this with a question which will clear it up.

The WITNESS. We went over to the house of Mr. and Mrs. Froehling.

Q. Did anyone go with you?

A. Mr. and Mrs. Haupt and myself went.

Q. What, if anything, did you or Mr. or Mrs. Haupt do then after you arrived there over at the Froehling home?

A. Mrs. Haupt went in the house and told us she would be only a few minutes, and we sat out in the car.

Q. By "we" you mean you and Hans Haupt waited out in the car?

495 A. That is right.

Q. How long did you wait there in front of the Froehling home?

A. Oh, about fifteen or twenty minutes, and the FBI man came out to the car and talked to us.

Q. After he had talked to you, what did you do?

A. He took us into the home.

Q. How long did you remain there?

A. Oh, not more than half an hour, I believe.

Q. Then where did you go?

A. I went back to the house with Mr. and Mrs. Haupt, then I left for my own home after that.

Q. You left for your own home?

A. Shortly after that.

Mr. HURLEY. Cross-examine.

Cross-examination by Mr. WARNHOLTZ:

Q. Mrs. Saure, in 1941, before Herbert Haupt left, you were engaged to be married to him, were you not?

A. That is right.

Q. Do you remember if Herbert Haupt and his parents Hans and Erna Haupt ever lived at 4444 North Western Avenue, Chicago, Illinois?

A. On Western Avenue?

Q. Yes.

A. That, I don't recall.

496 Q. Referring to this apartment of Haupts on Fremont Street, 2234, are you quite familiar with the apartment?

A. The apartment; oh, yes. I had been in there, oh, about four times all together. I believe I knew the apartment quite well.

Q. Do you know how many bedrooms they have in that apartment?

A. As far as I know, they only had one bedroom.

Q. Before Herbert Haupt left in 1941, you did go out with him occasionally?

A. Yes, I did.

Q. What means of conveyance did you use at such times?

A. Well, he had his own car.

Q. He had an automobile?

A. That is right.

Q. Shortly before he left, do you know what type of automobile he had?

A. I believe it was a Plymouth.

Q. A Plymouth?
A. Yes.
Q. Do you know whether or not his father, Hans Haupt, also had an automobile at that time?
A. Yes, he did.
Q. Do you know what type of automobile that was?
A. I believe that was an Oldsmobile.
Q. It was at the same time when Herbert Haupt had
497 an automobile, his father, Hans Haupt, had a car too?
A. Yes.
Q. This Oldsmobile which Hans Haupt drove, was that a rather old car or new car?
A. Well, it wasn't old and it wasn't brand new.
Q. Did you see Hans Haupt again after Herbert Haupt left two or three months later?
A. Oh, I believe it was even before that I went up to see them; to visit them.
Q. Did you know whether or not Hans Haupt at that time still had their Oldsmobile?
A. I believe he had his car at that time.
Q. He had his own?
A. I believe he had his Oldsmobile at that time.
Q. At that time?
A. Yes, sir.
Q. Accordingly you saw—I will withdraw the word "accordingly"—you saw Herbert only once after he returned in 1942?
A. That is right.
Q. In Chicago?
A. That is right.
Q. Subsequent to that you saw him again in Washington, D. C., at the Military Trial?
A. Yes.
Q. Were you there as a witness?
A. I was a witness; yes.
498 Q. For the Defense?
A. That is right.
Mr. WARNHOLTZ. That is all. Thank you.
Mr. HURLEY. That is all.

GUSTAVE ZERMER, called as a witness on behalf of the Government, after having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. FINN:

Q. Will you state your name, please?
A. Gustave Zermer.
Mr. FINN. Now, Mr. Zermer, you have to go slowly and talk

distinctly, because it is very difficult to hear you, you talk so awful fast; it is Gustave, is that right?

The WITNESS. Yes.

Q. Will you spell your last name?

A. Z-e-r-m-e-r.

Q. Zermer?

A. Yes, sir.

Q. Where do you live, Mr. Zermer?

A. 2242 Geneva Terrace.

Q. How long have you lived at that address?

A. About fifteen months.

Q. How long?

A. Fifteen months or fourteen.

499 Q. Where did you live before that time?

A. 851 Fullerton.

Q. And did you live at 851 Fullerton in June of 1942?

A. Yes.

Q. What type of building is that, Mr. Zermer?

A. That is a rooming house.

Q. I take it, you occupied one of the rooms in that rooming house?

A. Yes, sir.

Q. How far is 851 Fullerton Avenue from 2234 Fremont Street?

A. About three blocks.

Q. About three blocks?

A. Yes, sir.

Q. Who lived at 2234 Fremont Street in June 1942?

A. Mr. Haupt.

Q. On the third floor?

A. Mr. Haupt.

Q. What is that?

A. Mr. and Mrs. Haupt.

Q. Yes. When did you first become acquainted with Hans Max Haupt?

A. It was about 1928 or '39.

Q. And where did you meet him?

A. Northwest Hall.

Q. Well, was it a meeting of some kind or another?

A. Yes, sir.

500 Q. What organization?

A. German Veterans.

Mr. FINN. I can't hear you.

The WITNESS. German Veterans.

Q. Did you have an organization of German World War Veterans?

A. Yes, sir.

Q. Did you belong to that organization?
A. Yes, sir.
Q. Did Hans Max Haupt belong to that organization?
A. Yes.
Q. How often did you see Hans Max Haupt prior to June 1942; how frequently did you meet him?
A. Before?
Q. Yes.
A. Sometimes once a week, and sometimes once a month.
Q. How often did your organization meet?
A. Our organization; twice a month.
Q. Did you see him mostly at these meetings?
A. No.
Q. Where would you see him?
A. Over there, when we was at the meetings there, I guess.
Q. He wasn't at every meeting, I take it; he was not at every meeting?
501 A. No.
Q. When you would see Hans Max Haupt, where would you see him?
A. In the hall.
Q. At the meetings?
A. Yes, sir.
Q. Did Hans Haupt ever drive you home from the meeting?
A. Yes.
Mr. WARNHOLTZ. Objected to as leading, your Honor.
The COURT. Sustained.

By Mr. FINN:

Q. How did you get home from the meeting of the organization?
A. By streetcar.
Q. Did you ever go by automobile?
A. No.
Q. Did you ever ride in the automobile of Hans Max Haupt?
A. About three times.
Q. And on those occasions, did he take you home?
A. Yes.
Mr. WARNHOLTZ. I object, your Honor, to that as being leading.
The COURT. Overruled.

By Mr. FINN:

Q. Where did he take you on those occasions?
A. Take me for a ride by the house, get on the corner,
502 and left me off.
Q. All right. Now, in addition to your meeting him and seeing him at the meetings, did you ever see him at his home?

A. Yes, sir.

Q. How long had you been going to his home before June of 1942?

A. Oh, it was by—I saw him in 1942.

Q. Well, when in 1942 did you first start going over to his house?

A. February or March.

Q. By the way, were you married at the time?

A. No.

Q. Were you divorced?

A. Yes.

Q. When were you divorced?

A. June 1942.

Q. Were you separated from your wife in the early part of 1942 and living alone?

A. Yes, sir.

Q. After you had started to live alone, how often did you go over to Haupt's home?

A. Once a week; sometimes once a month.

Q. Were you a pretty good friend of Hans Max Haupt?

A. Oh, yes.

Q. Were you a friend of his?

A. Yes.

Q. Now, calling your attention to the evening of June
503 23, 1942, that would be Tuesday evening; were you in the Haupt home on that evening?

A. Yes, sir.

Q. What time did you arrive at the Haupt home?

A. 7:30; between 8 o'clock—between 7:30 and 8, I guess.

Q. Now, they lived in an apartment building, did they not; a flat building?

A. A flat building.

Q. Yes.

A. Yes.

Q. And which floor did they live on?

A. The third floor.

Q. Who lived on the first floor, if you know?

A. The landlord.

Q. The landlord?

A. Yes, sir.

Q. Do you remember the name Stanley Kluczyk?

A. I guess that is their name.

Q. Do you know the people living on the second floor or no?

A. No; I never seen them.

Q. The Haupts lived on the third floor; is that correct?

A. Yes; yes.

Q. When you go in that front door, how many apartments can you reach from that door?

504 A. From which door do you mean?

Mr. FINN: Well, never mind that; strike that out.

Q. At any rate, on this evening you walked up to the third floor, is that right?

A. Yes, sir.

Q. Who was there when you first come there?

A. It was Mrs. Haupt.

Q. Were Hans and Herbert Haupt there at that time?

A. No, no.

Q. By the way, had you ever met Herbert Haupt before this occasion?

A. No.

Q. How long did you remain with Mrs. Haupt before Hans Haupt or Herbert Haupt came back?

A. About two minutes.

Q. And did they come in separately or together?

A. They were together.

Q. And did they come into the apartment there, also?

A. Yes, sir.

Q. By the way, do you see Hans Haupt in the courtroom?

A. Yes.

Q. You point him out.

A. [Indicating.]

Mr. FINN. Indicating the defendant for the record.

Q. I will show you Government's Exhibit 3 for identi-

505 fication, and ask you if you recognize that photograph? Do you want to put your glasses on?

A. Yes.

Q. Who is that?

A. Herbert Haupt.

Q. Is that the young man you saw in there that evening?

A. Yes, sir.

Q. Now, what time after that did anyone else come into the apartment?

A. Yes; there was a Mrs. Melind.

Q. Is that Gerda Melind?

A. Yes.

Q. Is that the young lady who just left the stand?

A. Yes, sir.

Q. About what time was it when she came in?

A. About ten minutes later or fifteen minutes.

Mr. WARNHOLTZ. How long?

Mr. FINN. Ten or fifteen minutes, he said

Mr. BERTRAM. If the court please, I think the questions, which are all leading, should not be asked. Let the witness state and tell it.

The COURT. Well, generally speaking, that is so. It is difficult to understand this witness. I don't think it is leading. However, don't lead any more than you have to, Mr. District Attorney.

By Mr. FINN:

506 Q. Now, where did you go after Hans and Herbert Haupt had come into the apartment; where did you go?

A. I stayed there. I was in the front room.

Q. That would be the parlor, would it?

A. The parlor, yes, they call it.

Q. And where did they go?

A. They were in the kitchen eating supper. Mrs. Haupt had supper ready and she was waiting for them.

Mr. WARNHOLTZ. If your Honor please, I should like to have counsel specify who "they" is.

Mr. FINN. Well, I meant Hans and Herbert Haupt.

Mr. WARNHOLTZ. Well, how about Erna.

The WITNESS. They had all three together.

Mr. WARNHOLTZ. And Gerda; where was she?

Mr. FINN. I understood he said all three were together.

Mr. BERTRAM. Wait just a minute.

Mr. FINN. All right.

Q. How long did you remain in the front room?

A. Well, I was in there.

Q. Yes.

A. Before that was already when the supper was already.

Q. How long did you stay in the front room?

A. About twenty minutes; twenty-five minutes.

Q. Then where did you go?

A. To the kitchen.

507 Q. They had supper ready, then you all went in the kitchen?

A. They ate first.

Q. When you say "They ate first," who do you mean?

A. The three.

Q. Who?

A. Mr. Haupt, Mrs. Haupt, and Herbert Haupt.

Q. All right. Then you waited out in the front room; is that right?

A. Yes, sir.

Q. Was Gerda Melinda there at that time?

A. She come while they were eating at that time.

Q. She got there afterward or before that?

The COURT. He comes while they ate.

Mr. FINN. I didn't hear that; all right.

Q. Now, did they finish eating?

A. Yes; I guess so.

Q. Where did Herbert Haupt go?

A. Herbert Haupt go in the front room. I left the front room and stayed in the kitchen.

Q. You left the front room; you went into the kitchen?

A. Yes, sir.

Q. And Herbert Haupt went into the front room; is that correct?

A. Yes.

508 Q. Who was in the front room with Herbert?

A. Yes, sir; Mrs. Melind.

Q. You were not listening to their conversation?

A. No; not so nosey.

Q. All right. Now, then, you went back into the kitchen; is that correct?

A. Yes, sir.

Q. Who was there at that time?

A. Mr. and Mrs. Haupt.

Q. Now, did you have a conversation in the kitchen with them?

A. Oh, they were just washing the dishes and I was standing around there.

Q. Do you recall if anything else was said there on that occasion?

A. No; nothing what I remember; oh, they were talking over something there.

Q. Well; let me ask you this; to refresh your recollection, was anything said about an automobile?

A. That was in the front room where they were talking on that.

Q. What was said in the front room about an automobile?

A. Mr. Haupt bought an automobile, and that was all. She asked him the price and I didn't hear the price.

Q. Who said they bought an automobile?

569 A. Mr. Haupt.

Q. You are indicating the defendant?

A. Hans, who was there, he commenced talking, and he said to Mrs. Haupt he bought a machine.

Q. How long did you remain there in the kitchen?

A. Fifteen minutes, I guess.

Q. What is it?

A. Fifteen minutes.

Q. And then where did you go?

A. Home.

Q. Now, before you went home, did you have a conversation with Mr. Haupt?

A. Yes, sir; he asked me a question.

Q. What is it?

A. He asked me one question where I lived.

Q. He asked you for your address?

A. Yes.

Q. Where were you standing at that time; where were you at that time?

A. In the kitchen.

Q. And what did you say to him when he asked you for your address?

A. You know my address; I still live there.

Q. What is that?

A. You know, I still live there. You know my address, 851 Fullerton.

Q. Did you ask him why he wanted to know your address?

Mr. BERTRAM. I object to the leading question.

510 Mr. FINN. I don't think that is leading, your Honor.

Mr. BERTRAM. Ask him to relate the conversation.

The COURT. Yes, but the observation which I made a while ago is applicable. Proceed. Don't lead any more than you have to.

Mr. FINN. I am trying not to, but it is very difficult.

Q. Did you ask him why he wanted your address?

A. No, not directly.

Q. Just what did you say; what did you say and what did he say at that conversation?

A. I said, "You know my address, 851 Fullerton, and I still live there."

Q. Yes. What else was said on that subject?

A. Then I asked him, not directly then, I found out that he wanted my address for the mail.

Q. For the mail?

A. The boy was travelling around, and to send the mail to me——

Mr. FINN. Just a moment. You are going so fast.

Q. What was said about the mail?

A. "That he should send the mail to my house and I should bring it over to his house."

Q. Who said that?

A. Mr. Haupt.

511 Q. Well, just tell us exactly what he said, tell us just what he said to you, and what you said to him on that subject.

The COURT. Go slowly; very slowly.

The WITNESS. Well, I said to him, "what he wanted my address for." He said, "Herbert is travelling around all the time, and he use my address for mail and I bring the mail to his house."

Mr. FINN. Will you read that answer, Mr. Reporter, please.

(Last preceding answer read by the reporter.)

The WITNESS. That is it exactly.

The COURT. Is that what you said?

The WITNESS. Yes.

By Mr. FINN:

Q. Was there anything else said about the subject of your address there at 851; why he wanted your address?

A. "Herbert was travelling around."

Mr. FINN. Yes.

A. "And he send the mail to my house, and I should bring it over."

Q. Now, in addition to that, about the mail, was there anything else said about why he wanted your address?

A. That is why he wanted it, "he was travelling around."

512 Q. Was there anything said on the subject of getting a room for Herbert?

A. That is a different question, I guess, that was before that was.

Q. Tell us what was said about that, either before or after, whenever it took place.

A. That was when I was sitting in the front room, before, I guess I was in the kitchen. Because I can't remember that any more. Mr. Haupt asked me if I got a room for Herbert in my house, and I said, "No, I got a room for me alone; then what do you want a room for?"

Mr. FINN. I can't hear you.

Q. He asked you to get a room for Herbert in your home?

A. If I got a room in my room, and I said, "No; what do you want a room for? Ask the landlady, maybe she got, but I got no room in my place."

Q. Did you ask him why he wanted a room for Herbert over at your place?

Mr. BERTRAM. If the court please, I think counsel is going away beyond the order that is necessary. He is leading the witness all the time.

The COURT. I don't think so. Go ahead.

By Mr. FINN:

Q. Did you ask why he wanted Herbert to get a room at your place?

513 A. They got just one bedroom, see, and they don't want to lay down in the front room.

Q. Was there anything else said on that subject about the room?

A. Getting a room, what for, a room; what do you mean?

Q. About getting a room for Herbert?

A. It was too small at his house. He said he had three rooms, all he had over there.

Q. And was there anything else said on that subject about getting a room for Herbert over there?

A. Well, his flat——

Q. What is it?

A. His flat was too small to sleep in there.

Q. Mr. Zermer, anything else besides the question of the size of the flat, did he say anything else about getting a room for Herbert, why he wanted a room for Herbert?

A. His flat was too small.

Q. Yes; anything else said?

A. No.

Q. You testified—your Honor, I would like permission to cross-examine this witness.

Mr. WARNHOLTZ. I will object to that, your Honor.

The COURT. Overruled.

Mr. WARNHOLTZ. That has been done the last time, too, and the matter was abandoned.

514 Mr. FINN. The matter was not abandoned, by any means.

Mr. WARNHOLTZ. Yes, it was abandoned on the subject.

By Mr. FINN:

Q. You testified on the last trial of this case, did you not, Mr. Zermer?

A. Yes, sir.

515 Mr. FINN. To recall, will you see if these questions and these answers refresh your memory:

"Question. Mr. Zermer, you testified before the Grand Jury, did you not?

"Answer. Yes.

"The COURT. Q. On the 31st of August 1942; is that correct?

"Answer. I guess so."

Mr. WARNHOLTZ. What is the page?

Mr. FINN. Page 771.

"Question. And you were sworn to tell the truth at that time, were you not?

"Answer. Yes, sir.

"The COURT. Q. ——

"Answer. Yes, sir.

"Question. Under oath?

"Answer. Yes, sir.

"Question. Is that correct?
"Answer. Yes, sir.
"Question. Were you asked this question at that time, and did you make this answer: 'That he was afraid for Herbert to remain in his apartment at 2234 North Fremont Street.' Did you tell that to the FBI?
516 "Answer. This story?
"Question. Yes.
"Answer. Not when he came.
"Question. Did you tell the FBI what I have just read to you?
"Answer. Yes.
"Question. Was it true?
"Answer. Yes.
"Question. That sentence was true?
"Answer. Yes.
"Question. That I have just read to you?
"Answer. Yes.
"Question. Were those questions asked you and did you make those answers at that time?
"Answer. Yes.
"Question. Those were true at that time, were they not?
"Answer. Yes; they are still true now.
"Question. They are true now, are they not?
"Answer. Yes.
"Question. So that Hans Haupt told you that night that he was afraid to have Herbert around the house, is not that true?
"Answer. Yes, sir."

Were those questions asked you at that time and did
517 you make those answers?
A. Yes.
Q. And they were true, were they not, at that time?
A. They were true.
Mr. WARNHOLTZ. I suggest the witness be allowed to finish his answer and not be interrupted by counsel.
The COURT. Just a moment.

By Mr. FINN:

Q. They were true at that time, were they not?
A. Yes, sir.
Q. So that Hans Haupt on that night told you that he was afraid to have Herbert around the house, is not that true?
A. Yes.
Mr. FINN. That is all.
The WITNESS. Just what you asked me that question. You did not ask me that question.

Q. You did not recall that portion of the conversation; is that right?

A. Yes.

Q. But it did take place that night; is that right?

A. Yes, sir.

The COURT. Did you get to this last statement of his? Read it, Mr. Reporter.

(Record read.)

518 The COURT. And he said he had not been asked that question.

Mr. FINN. We were at cross purposes, evidently. I am sorry, Mr. Zermer. I would like to make sure that the court reporter has got the record clear.

The COURT. We will take a short recess.

(Whereupon the Jury retired.)

The COURT. You may step down, if you want to, but do not talk to anybody, and then come back when the recess is over.

(Whereupon a recess was taken.)

The COURT. Proceed.

Mr. FINN. When Mr. Haupt asked you if you would bring mail sent by Herbert to your home over to his house, what did you say to him?

Mr. WARNHOLTZ. I object to that, your Honor. That is not the question that was asked.

Mr. FINN. What is the question that was asked?

Mr. WARNHOLTZ. There was no question whether he would bring it.

The COURT. Read the question.

(Question read.)

The COURT. That is not what he said. Put your question again.

Mr. FINN. I will lay a foundation for it first,

519 your Honor.

Q. What did Hans Haupt say about mail to you that evening?

Mr. BERTRAM. That has been answered; both asked and answered.

The COURT. I think it has.

By Mr. FINN:

Q. What did you tell Hans Haupt when he asked you about mail?

A. I asked him for what mail come to my house.

Q. What?

A. I asked him for what he sent the mail to my house.

The COURT. "I asked for what he was sending the mail to my house."

By Mr. FINN:

Q. What did he say?

A. He said Herbert would travel around and send the mail to my house, bring it over there, that was all.

Q. What did you say to him?

Mr. BERTRAM. That has been gone over two or three times.

Mr. FINN. No, sir.

The COURT. Let the witness answer.

By Mr. FINN:

Q. What did you say after that?

A. I asked that question. That is all. Then he told me Herbert travelled around, sent mail to my house, I should bring it over to his house.

520 Q. Did you say you would do it or would not do it?

A. I do not remember that no more. That is many years. I do not remember that no more.

Q. Mr. Zermer, if I read some questions on this subject from your testimony of the last trial, would these possibly refresh your memory about that subject?

A. I do not know.

Q. You said that you did not remember now. Would it refresh your memory if I read to you some questions from the record?

A. Yes, sir.

Q. Do you recollect these questions being asked at the former trial and you making these answers:

Mr. WARNHOLTZ. What page?

Mr. FINN. 785.

"Question. Did you say you would receive the mail for Herbert when he was travelling around and would send it to you?

"Answer. Yes.

"Question. You told that to Hans and Erna, is that right: you would receive the mail and bring that over there to their house?

"Answer. Yes."

Q. Do you recollect those questions being asked you, and
521 do you recollect making those answers at the former trial, and were they true and correct at that time?

A. Yes, sir.

Q. So that you did agree——

Mr. WARNHOLTZ. I object to the conclusion of counsel.

Mr. FINN. So you did state that you would bring such mail as Herbert would send to your house over to the Haupt home; is that correct?

The COURT. Did you get the answer?

A. Yes, sir.

The COURT. He does not hear you unless you speak.

A. Yes, sir.

Mr. FINN. That is all.

Cross-examination by Mr. WARNHOLTZ:

Q. Mr. Zermer, did you receive a subpoena to come to court today? Were you served some sort of paper you should be here?

A. Yes; I got a card.

Q. May I see it?

A. [Producing document.]

Q. Who delivered this card to you, Mr. Zermer?

A. Who delivered?

Q. Yes.

A. The Marshall.

522 Q. Is that card now in the same condition as it was when you received it?

A. Yes, sir.

Mr. WARNHOLTZ. I will ask that this card be marked for indentification as "Defendant's Exhibit 1."

(The document produced by counsel was marked for identification "Defendant's Exhibit 1.")

Q. I now direct your attention to Defendant's Exhibit 1, and refer you to that part of it, where it reads as follows: "You are required under penalty to appear as a witness on behalf of the United States in the above-mentioned court, at room 450 United States Courthouse, Chicago, Illinois, on May 15—" dashed out—"May 18, 1944, at 10 o'clock A. M." Did you on either of those days appear at room 450 at this courthouse?

A. On the 18th?

Q. On the 15th?

A. 15th, no.

Q. 18th?

A. 18th.

Q. When you came to room 450, was that this courtroom?

A. No.

Q. What place did you find at room 450?

A. That was the office I walked into, Mr. Finn's office.

Q. Was it the office of the United States District
523 Attorney you were subpoenaed to?

A. Yes, sir; Mr. Finn.

Q. That was on the 18th. Was there any court held on that day? Did you go to court and testify?

A. No.

Q. You merely saw Mr. Finn in the office of the United States District Attorney?

A. Yes, sir.

Q. How long did you stay there?

A. Twenty-five minutes.

Q. When had you last been in the office of the United States District Attorney?

A. It was on the 18th.

Q. Before that?

A. Before? It was a week before.

Q. A week before?

A. Yes. I do not know that name any more.

Q. How did you happen to get there a week before?

A. It was by telephone—or was that telegram?

Q. Was it a telephone message?

A. Telephone message and telegram. I had a telegram, too. I do not know which date is on there.

Q. Telegram and telephone message?

A. Yes.

Q. Were you more than once, about a week before?

A. No, just week before that, before I got this one.

524 Q. You were there twice within the last four weeks?

A. Yes.

Q. That week before; how long did you talk to anyone in the United States District Attorney's office?

A. Just Mr. Finn.

Q. How long?

A. About twenty-five.

Q. The next time, forty-five minutes?

Mr. FINN. Pardon me. I think you misinterpret what he said.

By Mr. WARNHOLTZ:

Q. How long did you talk to him the last time; about a week ago?

A. Twenty-five minutes.

Q. Did you not say that, before, forty-five minutes?

A. Not forty-five minutes. Twenty-five or thirty minutes I had said.

Q. Slowly.

A. Twenty-five or thirty minutes; what I said before.

Q. How long did you talk to him when you went down there in response to a telegram?

A. And after, I guess, it was the telegram, I think I got this after the telegram. It was for the 15th. It was the 18th. I do not remember that no more now.

Q. Did you go once or twice, then?

A. Twice.

525 Q. How long did you talk to him each time?

A. It was about twenty-five minutes.

Q. Each time?

A. Yes; or half an hour.

Q. Do you mind, Mr. Zermer, if I keep this card for the time being, and deliver it to you at a later date?

A. You may, if you wish.

Mr. WOLL. The witness should have it punched, if your Honor please.

By Mr. WARNHOLTZ:

Q. Will you return it to me after you have had it punched today?

A. It is punched.

Q. For today?

A. Just Mr. Finn have to sign it when I am through, that is all.

Q. During June of 1942, you were living in some sort of a rooming house at 851 Fullerton Avenue?

A. Yes, sir.

Q. In Chicago?

A. Yes.

Q. Where was it that Hans Haupt was living at that time?

A. 2234 Fremont.

Q. Did you remember the exact house number two years ago, or have you learned it during the trial?

A. I just heard it a little while ago, and I still remember it.

526 Q. You do not say at that time, two years ago, that you merely knew the location of the house?

A. I know the location. I was not there no more after that two years.

Q. A little slower. If you had wanted to write him a letter during June 1942, you would have known his house number at that time?

A. Yes, sir.

Q. You would?

A. Yes, sir.

Q. You went very frequently?

A. Yes, sir.

Q. For a while you went there every evening, did you not?

A. Not every evening, once a week; two weeks twice.

Q. And you have testified he took you home two or three times in his automobile?

A. Yes, sir.

Q. That he would leave you off in front of the house or possibly at the corner?

A. Yes, sir.

Q. Did you ever tell him the number of that particular house where you lived?

A. Yes, I told him the number of the house, too.

Q. When did you tell him that, when he let you off at the corner the first time?

A. The first time; yes.

527 Q. Did he ask you, "What is the number of this house where we are stopping?"

A. No; not at that time.

Q. At what time was it?

A. It was before. It was before May 1st; or the second time when he took me.

Q. Did he write it down?

A. No.

Q. So you once told him the number of the house?

A. Yes.

Q. Mr. Zermer, did you on June 28, 1942, work at Harm's Park as a bartender for the German Day Association?

A. Yes, sir.

Q. You did?

A. Yes, sir.

Q. Do you remember that Hans Haupt was the Chairman of some Committee on this German Day Association?

A. Yes, he was committeeman; he was not there that day.

Q. He was not there?

A. No.

Q. You remember he was Chairman of some Committee?

A. Yes.

Q. The Sunday preceding, on June 21st, there were some festivities in the same park by the United Male Choruses; do you remember that?

A. Yes.

Mr. FINN. I will object to that as improper cross-examination.

528 Mr. WARNHOLTZ. I will show—I will connect it up, your Honor.

Q. Did you see Hans Haupt there, too, at that time?

A. I do not remember that.

Q. Do you remember if Hans Haupt asked you for your address at that time, telling you, "I want to give it to the Chairman of the Bar Committee so that they can tell you you should come over to work on the German Day Association Sunday"?

A. It was about two months before that—which one? For the German Day, do you mean?

Q. The German Day Association had this festivity on June 28th?

A. On June 28th.

Q. The United Male Chorus had its festivity on June 21st?

A. We had nothing to do with that feast. He did not ask me nothing.

Q. You worked there, did you not?

A. I was there.

Q. And he went there, did he not?

A. No; I cannot remember any more if I see him.

Q. Do you remember that Hans Haupt told you, "Give me your address and I will tell the chairman of the Bar Committee to communicate with you so that you can work on the German Day Association"?

529 A. That was about two months before that.

Q. About two months before?

A. Yes.

Q. He asked you then for that address, for that purpose?

A. Yes.

Q. At that time did he write it down?

A. I do not know.

Q. You do not know?

A. No.

Q. Did he ask you for that address at that time so that he could arrange for you to work as bartender on June 28th?

A. Yes, sir.

Q. 1942?

A. Yes, sir.

Q. When the German Day Association held the picnic at Harm's Park?

A. Yes.

Q. On Western Avenue?

A. Yes.

Q. Now, Mr. Zermer, so that you may not become confused, let us slowly go over to June 23, 1942, on a Tuesday. Do you remember that evening you went to the home of Hans Haupt?

A. Yes, sir.

Q. You remember that?

A. Yes, sir.

Q. When you arrived there, who was in the home?

A. Just Mrs. Haup alone.

Q. And then she told you—what did she tell you

530 when you asked her where Hans was?

A. I asked her first if Hans was home, and she said no. Then as she stepped to the window, looked down. Then she said, "There he is, coming with Herbert."

Mr. Bixx. What?

A. "There he is, coming with Herbert."

By Mr. WARNHOLTZ:

Q. She told you immediately, looking out the window, that the two were coming home?

A. Yes.

Q. Or to the house?

A. Yes.

Q. Hans and Herbert, and they did come up immediately, did they not?

A. Yes.

Q. So you had been in the house all told perhaps not more than five minutes when Hans and Herbert came in there?

A. It was two minutes.

Q. And after while some young lady came in, Gerda Melindi?

A. Yes.

Q. How much later was that?

A. I do not know whether it was ten or fifteen minutes or twenty minutes. I was sitting there, reading the story; had a paper. Then she came in while they were eating supper. It was
531 about fifteen minutes at the most; longest.

Q. At the time when Gerda Melindi came in were Hans and Herbert home?

A. Hans and Herbert; yes, they was in the kitchen.

Q. Are you sure that Hans and Herbert did not come in later, after Gerda Melindi came?

A. No; they was sitting, eating supper.

Q. Did you see them? Where were you sitting at the time when they were in the kitchen?

A. I was in the parlor.

Q. In what part?

A. In the parlor.

Q. Where were you sitting in the parlor? Can you draw a diagram of that home, Mr. Zermer; just show us about what it looked like, in a rough manner, if you please?

A. I am not artist.

Q. In a rough way.

A. Hall building—just a room.

Q. The front, and where the kitchen is, where they were sitting, and of the part you were sitting in.

A. That is the kitchen. There is the hallway. There is the front.

Q. Mark the front. This hall goes clear up into here and down this way, does it, runs into the bedroom, against the bedroom, or how?

532 A. It was just a bedroom. This is the parlor. There is the hall. That was all.

Mr. Finn. Your Honor, I cannot hear the witness talking with Mr. Warnholtz. I do not think the court reporter can hear it.

Mr. Warnholtz. We will turn that over, sir.

Q. You will draw a mark to show where the hall leading from the front room——.

A. Yes.

Q. To the entrance——

A. Yes.

Q. Does that extend clear out, so it runs against the bedroom? Does it go into this door, which is a door——

A. That is the door.

The Court. You are standing so close to the witness he talks to you.

Mr. Warnholtz. That is difficult, I realize; I am sorry, your Honor.

Q. Now, mark in the front room the chair, where you were sitting, the location?

A. There.

Q. That corner?

A. Yes.

Q. I will ask you, will you mark that corner with a capital "A," the place where you sat? I will ask you, sitting in that
533 chair, could you, from there, look into the kitchen?

A. No.

Q. Could you see from there who was eating in the kitchen?

A. No.

Q. Did you go to the kitchen to see who was eating there?

A. No.

Q. When Gerda Melindi came, at the time she came, where did she go?

A. She was still sitting in the living room.

Q. In the front room?

A. Yes.

Q. When Hans and Herbert came in, how long did they stay in the front room until they went into the kitchen?

A. It was not long; maybe two minutes.

Q. Then they spoke about having bought an automobile?

A. Yes.

Q. During that time?

A. Yes.

Q. Do you remember, Mr. Zermer, when you first, the first time you testified here, about a year and a half ago, in this case, as to what Hans Haupt told you about why he wanted a room in your building, you became rather confused, did you not?

A. Yes.

Q. Are you confused now?
A. No.
Q. How is that?
A. No.
534 Q. How many bedrooms are there in the Haupt home?
A. One.
Q. When did you hear about this case, the first time, from the authorities, about how long ago, Mr. Zermer?
A. The first time?
Q. That the authorities came to you about this matter; when?
A. In the first case do you mean, Mr. Warnholtz?
Q. Well, in this case, itself, the very first time that you were approached by the authorities; when was that, and where was it?
A. November; November 1942. It was October——
Q. Well, who talked to you first about this case, members of the Federal Bureau of Investigation?
A. That was in August.
Q. August 1942?
A. 1942; the Federal Agent of the FBI.
Q. Where did you meet them?
A. They come, picked me up in the shop.
Q. They picked you up?
A. Yes.
Q. Where were you working at that time?
A. I was working there.
Q. Where?
A. 2231 Lincoln Avenue.
535 Q. Are you an American citizen?
A. Yes, sir.
Q. Have you ever been arrested for the commission of any crime?
A. No.
Mr. FINN. I will object to the materiality of this.
The COURT. So state. The only question, if you are seeking to impeach him, is has he ever been convicted of a felony.
Mr. FINN. I do not think counsel has any such purpose.
Mr. WARNHOLTZ. Not for that purpose.
Q. Did these agents, when they picked you up, have a warrant for your arrest?
Mr. FINN. I will object to that; immaterial.
A. This attorney, I gave him that——
The COURT. Sustained.
Mr. WARNHOLTZ. What did they tell you when they came?
Mr. FINN. I will object to that as immaterial.
A. They asked me my name.
Mr. FINN. Just a minute.

Mr. WARNHOLTZ. Name?

Mr. FINN. I think it is immaterial.

Mr. WARNHOLTZ. I want to show, your Honor, that the FBI used third-degree methods on this man.

536 The COURT. What?

Mr. WARNHOLTZ. Used third-degree methods on this man.

The COURT. What?

Mr. WARNHOLTZ. That they used third-degree methods on this man to obtain the statement on which all future examinations were based.

Q. What did they say to you when they arrived?

Mr. FINN. Of course, the court has an objection before him. I do not think he has ruled on it.

The COURT. You may step into the jury room, ladies and gentlemen.

(And thereupon the Jury withdrew from the courtroom in charge of the Marshall, and thereafter the following proceedings were had in the Jury's absence:)

By the COURT:

Q. Your name is Gustav——

A. Gustav Zermer.

Q. Gustav Zermer?

A. Yes, sir.

Q. The things that you have told us here today, are they true?

A. Yes, sir.

Q. The whole truth?

A. Yes, sir.

Q. Nothing but the truth?

A. That is right.

Q. Nothing but the truth?

A. Yes.

537 Q. You felt under no constraint or duress, that you have to tell what anybody forced you to tell—anything that was not true?

A. It was all true what I have told so far.

The COURT. That is the question, Mr. Warnholtz.

Mr. WOLL. May I say this, your Honor: I think Mr. Warnholtz has in mind the same type of thing that he went into on the first trial. That, of course——

Mr. WARNHOLTZ. Maybe I would like——

Mr. WOLL. The question whether this witness also stated as to his being treated during that time better than he had ever been treated in his life, had a better bed to sleep on.

Mr. WARNHOLTZ. Mr. Woll, you do not have to talk for me.

Mr. WOLL. Go ahead. Tell the court.

Mr. WARNHOLTZ. I want to show this man was held for three days without lawful authority; that he was held over in the Bankers Building in the private jail of the Federal Bureau of Investigation, not allowed to go home, his clothing taken away from him; that he signed three or four statements—four or five—three or four at least; he must have been utterly confused at the time he got through there; then he was asked questions at times
538 without food, because I believe that he stated once he was hungry.

Certainly it should not take very long to get these few facts which you mentioned.

The COURT. I am not going to correct all of the evil in this world in this case.

Let us say, the only question I am interested in at the moment is whether or not anything this witness told us this afternoon is untrue. That is the only question before me, whether or not by force, intimidation, duress, or anything of that sort, he has told anything that is untrue. He has assured us it was the whole truth.

Mr. WARNHOLTZ. We would like to show the Jury it is not the truth.

The COURT. I am not going to enter into those collateral matters. I am not going to confuse the issue to this Jury with that—

Mr. BERTRAM. They should have the benefit of that.

The COURT. No.

Mr. BERTRAM. Whether it is the testimony——

The COURT. What?

Mr. BERTRAM. The Jury should have the right—that is, we should have the right to have the Jury informed about these methods that Mr. Warnholtz mentioned to your Honor, which certainly showed——

539 The COURT. Do you expect to show that this witness said anything else; anything different from what he now says, at any time?

Mr. WARNHOLTZ. I expect to show that this witness at this time does not know what he is talking—he is talking by influence or fear.

The COURT. You expect to show that this witness ever at any time made any different statement than any he has made this afternoon?

Mr. WARNHOLTZ. Yes; we shall anticipate it in this way: I will bring out that he signed three or four statements. I cannot conceive why the FBI should make him sign three or four statements—I have never seen them—unless they show inconsistency, and we expect to show it in this way, if the man is asked on three or four points, or facts—only, if he answered the questions for

three days, for fully three days, and during that time was held illegally——

The COURT. You are just confusing my question. That brings up another question. I do not want to go into any interrogation or question not pertinent to the question before us. The only question, so far as this witness is concerned, has he told us anything now not true?

546 Mr. BERTRAM. One time, your Honor will recall that he testified nothing else was said, and then Mr. Finn got out the record heretofore, of the last trial, and before the Grand Jury, and put these questions to the witness, and asked him the question, "Are those things true or not?" Where the witness, having made confidential statements, would be in fear that he would be at one time or another punished for perjury, or something, on such method of interrogation. I think the method of interrogation was such as to—as it is here——.

The COURT. I have listened, and we listened to what was said to him. He said, "Yes, I said it. You did not ask me about that." Bear in mind that this witness does not use English with the facility of some of us. He was doing the best he could. He has done very well; but when he was asked, he said, "Yes, I said that. You did not ask me that." That is what the witness said.

Mr. BERTRAM: By third-degree methods, to go into the attitude of the witness here, because fear under those circumstances, I think the method that counsel used here, Mr. Finn, was very——

The COURT. It is a way of refreshing his recollection.

547 Mr. BERTRAM. It resulted in something beyond that, because it made the witness change his previous statement, that that was all that was said.

The COURT. It did not do anything of the kind. This witness with a limited understanding of English, had to be cross examined really. The questions have got to be leading with this witness, or we would never get anything out of him, talking to him in English. We have got to lead this witness, or we won't get anything out of him.

Mr. WARNHOLTZ. Maybe we will be able to show they said his citizenship papers would be taken away because of the investigation.

Mr. FINN. I do not think there was any such statement.

Mr. WARNHOLTZ. I know some of these witnesses were threatened. I do not know whether he was included in that.

Q. Did anybody talk to you about taking citizenship papers away from you, of the FBI?

A. Mr. Hirsch.

Q. Mr. Hirsch?

A. Yes.

Q. Did he tell you you might be sent to a Concentration Camp?
A. No.
Q. Just said citizenship taken away?
542 A. Yes.
The COURT. Who is Mr. Hirsch?
Mr. WARNHOLTZ. Mr. Hirsch is an FBI agent, who will testify.

By the COURT:

Q. Have you told us anything that was untrue today, because of what Mr. Hirsch said? Have you told us anything today that was untrue?
A. No; no question.
Q. Have you said anything here today that was untrue, because anybody said anything to you in the past, or threatened you in the past, have you told me an untruth?
A. I told the truth, questions what I understand, I answered.
Q. Listen to this: Have you told anything here at all today that is untrue?
A. No. All of it true.
Q. What?
A. All true.
Q. All of it?
A. Yes.
The COURT. You are going to undertake to show that he told something that was untrue?
Mr. WARNHOLTZ. I am going to attempt to show that he is confused; that these statements which he states today are not the statements he originally made; that I would attempt to show by inference. I believe we should have the right to do it.
The COURT. Go ahead. Do it right now.
543 Mr. WARNHOLTZ. I want the Jury to get the benefit of it.
The COURT. Do it right here, and if you do it, I will let the Jury hear it. Go ahead with him right now. I do not want to confuse the mind of the jurors.

By Mr. WARNHOLTZ:

Q. When the FBI agents came into your place of employment at 2231 Lincoln Avenue, did they ask you if you would be willing to come, or did they tell you to go along?
A. They showed me the card, investigation cards, what they had with them. I came along over. I went for my clothes changed, went right over with him.
Q. Had they told you to go along with them?
A. Yes.
Q. Where did you go?
A. I go right with them. There were two fellows there.
Q. Down to the Bankers Building?

A. Yes; down to the 19th floor.

Q. About what time of day was it when they took you down?

A. About 10:30 it was, in the shop.

Q. 10:30, about?

A. Yes.

Q. When you arrived at the Bankers Building, that was what day of the week, Thursday, do you remember?

A. It was on a Thursday.

544 Q. When you arrived down there, what happened?

A. What is that?

Q. What happened when you got down there?

A. They asked me questions. I came in this room, sat down, and two fellows took my name, brought me in there, and they asked me questions.

Q. How long did they ask you questions?

A. It was about eleven o'clock until night eleven o'clock.

Q. About twelve hours?

A. Yes; twelve; yes.

Q. Then what happened to you?

A. Then I went to bed, after they told me to stay there, they gave me a room, had a bed, I was sleeping there.

Q. After you arrived, did they take your clothing away from you, your coat and vest?

A. Yes. I had some suit, they gave me one suit that was too big, and they had my pants along.

Q. They told you to take your clothes off and put on overalls, did they not?

A. Yes.

Q. Those overalls did not fit you?

A. No. Then I got my pants back.

Q. They allowed you to keep your pants on?

A. Yes.

545 Q. What did they do with the coat?

A. Had it in one room.

Q. Same room with you?

A. Not with me.

Q. They put it into another room?

A. Yes.

Q. In the evening when they got through questioning you, about eleven or twelve o'clock, you went to bed?

A. Well, they first brought me something to eat.

Q. They brought you something to eat?

A. Yes. That was the first time.

Q. Was that room where you slept in, locked, or could you have left it?

A. It was locked.

Q. From the outside?
A. Yes.
Q. And did they keep you there the next day?
A. The next day, questioned.
Q. That, you say, was Friday?
A. Yes.
Q. You stayed there all of that day, too?
A. Yes.
Q. Did they question you on Friday?
A. Yes.
Q. How long did they question you on Friday?
A. They came; they came in there. I do not know how many times a day it was.
Q. Then on Saturday, the same thing?
A. Saturday, the same.
Q. From Friday to Saturday, when you were there,
546 were you again sleeping in the same room you had slept?
A. The same room.
Q. And the room was again locked?
A. I left on Saturday.
Q. Did you ask Mr. Hirsch at any time whether or not you were arrested?
A. No.
Q. Is it not a fact that he said you were not arrested, but you could not leave?
A. Just we have—he just told me he had to hold me there. That was all.
Q. He had to hold you there?
A. Yes.
Q. Mr. Hirsch told you that while you were there in the Bankers Building?
A. Yes.
Q. Did you sign any statement while you were there?
A. I signed many.
Q. How many?
A. Three or four, I do not know.
Q. Three or four statements?
A. Yes.
Q. During all of that time, that is, Thursday, Friday and Saturday, Mr. Zermer—what time did you leave on Saturday?
547 A. Ten minutes to four.
Q. And during that time until ten minutes to four you discussed the same subject matter you have discussed here?
A. It was not so much afternoon; afternoon it was only a little while, asked me some questions.

Q. During the time that you were there, talking about these questions that we discussed now?

A. Yes.

Q. Well, did you change your answers from time to time?

A. I guess when I got the different questions, one time this way and one time the other way, I guess I was mixed up on these.

Q. At times you gave different answers?

A. Yes.

Q. You did not understand the questions?

A. Yes.

Q. Then you made a new statement?

A. Yes. I misunderstood the words—right.

Q. They treated you—let me ask you: When was it Mr. Hirsch told you that you might lose your citizenship papers?

A. It was the first day time.

Q. Do you know why he told you that?

548 A. I told a lie or something.

Q. He said you lied?

A. Yes.

Q. Then you changed your answer after that?

Mr. FINN. Just a minute. Will you please; instead of interpreting the questions, will you please let him make the answer?

Mr. WARNHOLTZ. You should address the court.

Mr. FINN. I will object to the form of the question, putting words into the mouth of the witness.

Mr. WARNHOLTZ. Cross examination. This is not direct.

The COURT. Objection overruled.

Mr. WARNHOLTZ. Let the court reporter read my question.

(Record read.)

By Mr. WARNHOLTZ:

Q. We will go back, Mr. Zermer; you may have forgotten. You stated that Mr. Hirsch said your citizenship papers might be taken away because you told a lie?

A. Yes.

Q. After he told you that, did you then change your answer?

A. No. I asked him then the question if he wanted the truth or a lie from me. That is what I asked him. If he want

549 the truth or a lie from me, that is what I asked him. He told me, "I want the truth." I then told him, "I want the truth," and that is what I told him.

Mr. FINN. Will you read that, please?

(Answer read.)

By Mr. WARNHOLTZ:

Q. What question was that where he thought that you were lying, what question had he asked?

A. I cannot remember that no more.

Q. You cannot remember that any more?

A. It was all together; I cannot remember which question that was now.

Q. How many people were asking you?

A. Three.

Q. Questions?

A. Three.

Q. Three different agents?

A. Yes.

Q. Were they, sometimes the three of them?

A. Yes; sometimes; yes. Sometimes then two walked out, and just Mr. Hirsch asked me alone them questions.

The COURT. Well, I will have to ask you to come back again Wednesday morning, and we will hear you.

Mr. Zermer, I will have to ask you to come back on Wednesday morning at 10 o'clock. Do not discuss this case with anybody. I am telling you, do not discuss it with anybody, nobody at all. Then you come back here on the stand on Wednesday morning.

The WITNESS. Yes, sir.

The COURT. Bring in the Jury.

Mr. BERTRAM. May we have the witness identify this drawing? This is the drawing you made before.

The WITNESS. Yes.

Mr. BERTRAM. Let the court reporter identify it.

The COURT. Yes; that can be done.

Mr. WARNHOLTZ. This should appear as the jury——

The COURT. No jury here.

Mr. WARNHOLTZ. Can it be marked for identification "Defendant's Exhibit 2?"

(The document produced by counsel marked for identification "Defendant's Exhibit 2.")

(The following proceedings were had in the presence and hearing of the Jury:)

The COURT. We will recess at this time, ladies and gentlemen, until 10 o'clock Wednesday morning. There will be no court tomorrow. In the meantime, do not discuss this case with anyone, or permit anyone to discuss it with you, and return here at 10 o'clock Wednesday morning.

(Whereupon the further hearing of the above entitled cause was continued to Wednesday, May 31, 1944.)

551 In the District Court of the United States for the Northern District of Illinois, Eastern Division, at Chicago.

UNITED STATES OF AMERICA

v.

HANS MAX HAUPT

Before Hon. JOHN P. BARNES, Judge, and a Jury

Wednesday, May 31, 1944, 10:00 o'clock A. M.

Parties met pursuant to an adjournment.

Counsel present: Mr. J. Albert Woll, United States District Attorney for the Northern District of Illinois, Eastern Division, at Chicago, and Mr. Earle C. Hurley, and Mr. Richard G. Finn, Assistant United States District Attorneys for the Northern District of Illinois, Eastern Division, at Chicago, appeared for the United States of America. Messrs. Paul A. F. Warnholtz, Frederick J. Bertram, appeared for the defendant.

* * * * * * *

552 The COURT. Do you want the jury present?

(The following proceedings were had in open court in the absence of the jury.)

The COURT. What is this man's name, Gustav Zermer?

Mr. WOLL. Zermer.

The COURT. Do you want him interrogated about the matters you were interrogating him about on Monday evening, or are you satisfied to have the reporter read your examination, read the cross-examination so far as it went, or do you want to interrogate him?

Mr. WARNHOLTZ. Read it to the jury, your Honor.

The COURT. What is your preference?

Mr. WARNHOLTZ. I believe that should answer for that purpose. I want to ask some questions.

I would like to ask one or two more questions, whether or not he was confused at the time, because——

The COURT. All right, let the reporter read what was said on cross-examination which was had in the absence of the jury. Then you can ask him such further questions as you may desire.

Mr. WARNHOLTZ. I want to supplement it with one statement, that the one exhibit be marked which was not done.

553 I have one more matter, if the Court please. We at one at the beginning—the court agreed to it and counsel—that it would not be necessary to take any exceptions to rulings by the court, so if we made objection which was either sustained or overruled it would preserve that objection.

The COURT. When you submit a matter to the Court for decision you may assign as error the Court's ruling, whatever it may be, without taking an exception, all I want to do is to make sure that I know what I am ruling on.

Mr. WOLL. If your Honor please, we feel that we are not certain ourselves that we are sound in the position that defense attorney is not entitled to go into this type of examination before the jury. We wish to withdraw our objection of the questioning.

The COURT. I have overruled you anyhow.

Mr. WOLL. I did not know that you had ruled on it.

The COURT. I said they might either ask the witness questions in the presence of the jury or have the transcript read. He has indicated a desire to have the transcript read and to ask some other questions. Bring in the jury.

(The following proceedings were had in open court in the presence and hearing of the jury:)

554 The COURT. Ladies and gentlemen, there was some testimony or some examination of the witness, Gustav Zermer, during your absence from the courtroom on Monday evening. The court reporter will now read that examination, questions and answers and you will listen to it with the same effect as if you had heard the examination.

GUSTAVE ZERMER, a witness called on behalf of the Government, having been previously duly sworn, resumed the stand and testified further as follows:

(Record read as follows:)

"By Mr. WARNHOLTZ:

"Q. When the FBI agents came into your place of employment at 2231 Lincoln Avenue, did they ask you if you would be willing to come, or did they tell you to go along?

"A. They showed me the card, investigation cards, what they had with them. I came along over. I went for my clothes changed, went right over with him.

"Q. Had they told you to go along with them?

"A. Yes.

"Q. Where did you go?

555 "A. I go right with them. There were two fellow there.

"Q. Down to the Bankers Building?

"A. Yes, down to the 19th floor.

"Q. About what time of day was it when they took you down?

"A. About 10:30 it was in the shop.

"Q. 10:30 about?

"A. Yes.

"Q. When you arrived at the Bankers Building, that was what day of the week, Thursday, do you remember?

"A. It was on a Thursday.

"Q. When you arrived down there, what happened?

"A. What is that?

"Q. What happened when you got down there?

"A. They asked me questions. I came in this room, sat down, and two fellows took my name, brought me in there, and they asked me questions.

"Q. How long did they ask you questions?

"A. It was about eleven o'clock until night—eleven o'clock.

"Q. About twelve hours?

"A. Yes, twelve; yes.

"Q. Then what happened to you?

"A. I went to bed, after they told me to stay there, and gave me a room, had a bed, I was sleeping there.

"Q. After you arrived, did they take your clothing away from you, your coat and vest?

"A. Yes. I had some suit, they gave me one suit that was too big, and they had my pants along.

"Q. They told you to take your clothes off and put on overalls, did they not?

"A. Yes.

"Q. Those overalls did not fit you?

"A. No. Then I got my pants back.

"Q. They allowed you to keep your pants on?

"A. Yes.

"Q. What did they do with the coat?

"A. Had it in one room.

"Q. The same room with you?

"A. Not with me.

"Q. They put it into another room?

"A. Yes.

"Q. In the evening when they got through questioning you, about eleven or twelve o'clock, you went to bed?

"A. Well, they first brought me something to eat.

"Q. They brought you something to eat?

"A. Yes. That was the first time.

"Q. Was that room where you slept in, locked, or could you have left it?

"A. It was locked.

"Q. From the outside?

"A. Yes.

"Q. And did they keep you there the next day?

"A. The next day; questioned.

"Q. That, you say, was Friday?

"A. Yes.

"Q. You stayed there all of that day, too?

"A. Yes.
"Q. Did they question you on Friday?
"A. Yes.
"Q. How long did they question you on Friday?
"A. They came—they came in there. I do not know how many times a day it was.
"Q. Then on Saturday, the same thing?
"A. Saturday, the same.
"Q. From Friday to Saturday, when you were there,
558 were you again sleeping in the same room you had slept?
"A. The same room.
"Q. And the room was again locked?
"A. I left on Saturday.
"Q. Did you ask Mr. Hirsch at any time whether or not you were arrested?
"A. No.
"Q. Is it not a fact that he said you were not arrested, but you could not leave?
"A. Just we have—he just told me he had to hold me there. That was all.
"Q. He had to hold you there?
"A. Yes.
"Q. Mr. Hirsch told you that while you were there in the Bankers Building?
"A. Yes.
"Q. Did you sign any statement while you were there?
"A. I signed many.
"Q. How many?
"A. Three or four, I do not know.
"Q. Three or four statements?
"A. Yes.
"Q. During all of that time, that is, Thursday, Friday
559 and Saturday, Mr. Zermer—what time did you leave on Saturday?
"A. Ten minutes to four.
"Q. And during that time until ten minutes to four you discussed the same subject matter you have discussed here?
"A. It was not so much afternoon; afternoon it was only a little while, asked me some questions.
"Q. During the time that you were there, talking about these questions that we discussed now?
"A. Yes.
"Q. Well, did you change your answers from time to time?
"A. I guess when I got the different questions, one time this way and one time the other way, I guess I was mixed up on these.
"Q. At times you gave different answers?

"A. Yes.
"Q. You did not understand the questions?
"A. Yes.
"Q. Then you made a new statement?
"A. Yes. I misunderstood the words—right.
"Q They treated you—let me ask you: When was it Mr.
60 Hirsch told you that you might lose your citizenship papers?
"A. It was the first day time.
"Q. Do you know why he told you that?
"A. I told a lie or something.
"Q. He said you lied?
"A. Yes.
"Q. Then you changed your answer after that?"

* * * * *

(Record read.)
"Q. We will go back, Mr. Zermer; you may have forgotten. "You stated that Mr. Hirsch said your citizenship papers might e taken away because you told a lie?
"A. Yes.
"Q. After he told you that, did you then change your answer?
"A. No. I asked him then the question if he wanted the truth r a lie from me. That is what I asked him. If he want the truth r a lie from me, that is what I asked him. He told me, 'I want he truth.' I then told him, 'I want the truth,' and that is what I told him.
61 "Q. What question was that where he thought you were lying, what question had he asked?
"A. I cannot remember that no more.
"Q. You cannot remember that any more?
"A. It was all together; I cannot remember which question that as now.
"Q. How many people were asking you?
"A. Three.
"Q. Questions?
"A. Three.
"Q. Three different agents?
"A. Yes.
"Q. Were they, sometimes the three of them?
"A. Yes, sometimes; yes. Sometimes them two walked out, and just Mr. Hirsch asked me alone them questions."

62 Cross-examination (continued) by Mr. WARNHOLTZ:

Q. To make this clear I will ask you this question, Mr. rmer: Did you stay at the quarters of the Federal Bureau of Investigation at the Bankers Building, Chicago, from Thursday at

eleven o'clock until Saturday the same week, at about four o'clock in the afternoon, without having left, or without leaving those quarters?

A. Yes, sir.

Q. You were there all during that time?

A. Yes, sir.

Q. You were not permitted to leave during that time?

A. No, sir.

Q. Mr. Hirsch told you you were not permitted to leave?

A. I do not know that. I know I was there until ten minutes to four.

Q. Did Mr. Hirsch at one time say that he had to hold you?

A. That was the first night.

Q. Mr. Zermer, do not shake your head as an answer. Just say yes or no, kindly, so the reporter will get your answer cor-
563 rectly. When you were down there at the headquarters of the FBI did you knowingly tell them a single lie?

A. No.

Q. Do you now remember what your statement was when Mr. Hirsch of the Federal Bureau of Investigation, agent, told you you were lying?

A. Oh, he told me all the Haupt case, asked me questions about Mr. Haupt here, Herbert and Mrs. Haupt.

Mr. FINN. I cannot hear you.

A. The question was over Mr. Haupt, Mrs. Haupt and the boy. It was question over them, what Mr. Hirsch asked me, and the two other guys.

By Mr. WARNHOLTZ:

Q. What was the particular question, if you remember?

A. He turned it several times around, the question when I was making the answer.

Q. When was it, when did the FBI agent, Mr. Hirsch, tell you that you would lose your citizenship papers, was that the first day they had you, or the second?

A. It was the first day.

Q. How?

A. The first day?

Q. Yes.

A. Yes.

Q. You testified in this case then about a year and a half ago, Mr. Zermer?

A. Yes.

564 Q. And at that time when you testified did you knowingly tell a lie?

A. No.

Q. Did you then——

A. I was willing to tell the truth.

Q. How is that?

A. I was willing to tell the truth; everything.

Q. Did you tell the truth as far as you understood the questions?

A. Yes, sir.

Q. At that time were you confused at times concerning the questions that were put to you?

Mr. FINN. I do not think that is material, your Honor.

A. The first day.

Mr. FINN. What took place at the first trial, and I move the answer be stricken, your Honor.

The COURT. Strike it.

By Mr. WARNHOLTZ:

Q. During this hearing were you at times confused when you were asked questions?

A. Yes, sir; the first day here—I had nothing to eat here. It was in the morning 7:30 I ate and when I was asked it was about eleven o'clock.

Mr. FINN. I ask the answer be stricken, not responsive.

565 The COURT. That objection may come from the examining counsel.

By Mr. WARNHOLTZ:

Q. Were you at any time during this hearing confused concerning questions then being asked you?

A. Not when Mr. Finn——

Mr. FINN. Just a minute, I will object to that unless stated by counsel what hearing he is speaking of, so the witness will understand.

Mr. WARNHOLTZ. I said at this hearing.

The COURT. At this trial?

Mr. WARNHOLTZ. At this trial?

Mr. FINN. Will you state the question again, please?

By Mr. WARNHOLTZ:

Q. Were you at any time confused during this trial when Mr. Finn asked you questions?

A. No; not by Mr. Finn.

Q. Mr. Zermer, I now hand you a paper marked for identification—marked "Defendant's Exhibit 2"—being a diagram which you drew the other day, and I will ask you to put the word "kitchen" into the place which is supposed to indicate the location of the kitchen.

A. [Marks document.]

Q. You have simply there the letter "K"?

A. Yes.
Q. Correct?
A. Yes.
566 Q. That indicates the kitchen?
A. Yes, sir.
Q. Thank you.
Mr. BERTRAM. Answer "yes" or "no."
Mr. WARNHOLTZ. Did the reporter get the answer?
(Last three questions and answers read.)
Mr. WARNHOLTZ. Thank you, that is all.

Redirect-examination by Mr. FINN:

Q. Mr. Zerner, you understood, did you not, that you are testifying here under oath, under the full protection of the court?
A. [Witness nods head.]
Q. Do you understand also that no one is threatening you, or no one intends threatening you; is that correct?
A. Yes, sir.
Q. Will you tell me whether the statements that you made Monday in response to questions I asked you were true or untrue?
A. It was true.
Mr. BERTRAM. I object on the ground of being leading, your Honor.
567 The COURT. He may answer that. Overruled.
Mr. FINN. Q. I think you said that the agents of the Federal Bureau of Investigation came out to your place of business; is that correct?
A. Yes, sir.
Q. And they introduced themselves as FBI agents and showed you their credentials; is that correct—a card, as you said?
A. Yes, sir.
Q. Were you willing—did they ask you if you would go along with them?
A. No. They said, "Come along." I was willing to come along.
Q. You were willing what?
A. I was willing to go along.
Q. Were you also willing to stay there?
A. Yes, sir.
Q. How did they treat you while you were there?
A. They treated me nice so far.
Q. Did any one touch you at all?
A. No.
Q. By the way, how was the food when you were up there?
A. The food was all right.
Q. What?

A. The food was all right.

568 Q. It was good?

A. I could not eat enough, so much.

Q. Did they bring you whatever you ordered?

A. Yes, sir.

Q Did you say they brought you too much?

A. They brought me too much; yes. All they brought for four people.

Q. What do you mean?

A. One time four people.

Q. Brought enough for four people to eat?

A. Yes, sir.

Q. How was the bed?

A. It was all right.

Q. Were they all right?

A. Same, like home.

Q. What?

A. Same, like home.

Q. Whenever you got hungry did they bring you what you wanted?

A. Yes, sir?

Q. Now, you said that Mr. Hirsch said this about your citizenship papers: He told you that you were to tell the truth; is that correct?

A. Yes, sir.

Q. He wanted the truth?

A. Yes.

Q. And you did tell the truth; is that right?

A. Yes, sir.

569 Mr. FINN. May I see the diagram?

Mr. WARNHOLTZ. Yes.

By Mr. FINN.

Q. I would like to get straight in my own mind this business about the living room and the kitchen. When you first came there, Erna Haupt was alone?

A. Yes, sir.

Q. And then Herbert and Hans came in; is that correct?

A. Yes, sir.

Q. Now, do you know whether Erna had prepared supper, or was preparing supper at that time before they came?

Mr. BERTRAM. I object to that, a leading question.

A. I said supper was ready; it was waiting for it.

The COURT. Sustained.

Mr. WARNHOLTZ. I move the answer be stricken.

The COURT. No need to strike it. Do not lead the witness any more than you have to.

Mr. FINN. Q. When you first got there what was Erna Haupt doing?

A. Opened the door for me. I asked if Hans was home. She said—she walked to the window. Then she said, "There he is coming."

Q. Then where did she go?

570 A. Then there was two coming up. Then I was sitting in my chair there in the front.

Q. Did you go to the kitchen before you went into the front or not?

A. No.

Mr. BERTRAM. I do not think that is proper redirect, counsel reviewing again matters that he did on original examination. It is not redirect of the cross-examination of the witness by Mr. Warnholtz.

Mr. FINN. I think it is, your Honor. He went into that subject on cross-examination. I think I have a right to go back into it.

The COURT. Objection overruled.

Mr. FINN. Where did Hans and Herbert go?

A. (No answer.)

Q. Where did Hans and Herbert go when they first came?

A. It was in the—they was in the front a little while. Then they was right go to kitchen, had supper.

Q. What were they doing in there, if you know?

Mr. BERTRAM. Objection.

A. Eating supper.

Mr. WARNHOLTZ. Asking for a conclusion.

By Mr. FINN.

Q. Did you see them go into the kitchen?

A. No.

Q. No?

571 A. To go into the kitchen—I did not go into the kitchen. What they do, what they eat?

Q. Did you later go into the kitchen?

A. Yes.

Q. Where were they sitting when you went into the kitchen?

A. They was all out the kitchen. They was standing in the kitchen.

Q. What?

A. They was standing in the kitchen. Herbert comes in the front room and the two was staying, cleaning dishes.

Q. Where were the dishes when you went back into the room; where were the dishes?

A. Most was in the sink.
Q. In the sink?
A. Yes.
Q. Was there anything else, beer?
A. No.
Q. Was there any beer?
A. No. That was after while. That was a little later.
Q. Tell us about that.
A. After they—they came in, Hans opened a bottle of beer. Then I had a glass of beer. I do not know if they had some before.
Q. Did you have a glass of beer?
A. I had a glass of beer.
572 Q. Was that in the kitchen with Hans?
A. Yes.
Mr. WARNHOLTZ. Who was present?

By Mr. FINN:

Q. Who was there?
A. Hans and Erna.
Q. And yourself?
A. Yes.
Q. That is correct?
A. Yes.
Q. When you were sitting out in the living room, did you hear any noises out in the kitchen?
A. No.
Mr. FINN. All right, that is all.

Re-cross-examination by Mr. WARNHOLTZ:

Q. One question, kindly: After Hans and Herbert came into the apartment, shortly after your arriving, did either of them, either of them leave the apartment again before Gerda Melind came in?
A. No; because they were eating supper. They was in the kitchen eating supper.
Q. Just answer my question. Did either of them ever leave the apartment again before Gerda Melind came in?
A. No.
573 Mr. WARNHOLTZ. I ask to strike the prior answer of the witness, not being responsive, if your Honor please.
The COURT. Oh, I will let it stand.

By Mr. WARNHOLTZ:

Q. Your answer is no?
A. "No."
Q. How soon after you arrived did Gerda Melind come, Mr. Zerbner?

A. About fifteen minutes, ten minutes.
Q. Ten to fifteen minutes after your arrival?
A. Yes, sir.
Q. About how many minutes elapsed after you arrived before Hans and Herbert came in?
A. I was there?
Q. Yes; after you got there?
A. One or two minutes.
Q. One or two minutes?
A. Yes.
Q. About how long did Hans and Herbert stay in the front room with you before they came into the kitchen?
A. Two, three minutes.
Q. About three minutes?
A. Yes, sir.
Q. When Gerda Melind came, did you see her eat anything?
A. No, sir.
574 Q. Did you hear Mrs. Haupt say she was going to make her something to eat?
A. No; I did not hear nothing.
Q. Did Gerda Melind go into the kitchen?
A. No, sir.
Q. When Hans and Mrs. Haupt and their son Herbert were in the kitchen while you were in the front room, about how long did they stay in there?
A. In the kitchen alone?
Q. Yes.
A. Having supper?
Q. Well, whatever it was?
A. Maybe half an hour.
Q. About half an hour?
A. Yes.
Q. How much time, if any, did you spend with Gerda Melind in the front room alone without Herbert, in the front part living room?
A. Twenty minutes or fifteen minutes.
Q. When Gerda came, who, if any one greeted her?
A. Mrs. Haupt.
Q. Who?
A. Mrs. Haupt.
Q. Did they come in the front room?
A. Yes.
Q. How long did she stay there?
A. She was right away back.
Q. What is that?
A. She goes right away back into the kitchen.

575 Q. What did she say to Gerda?

A. She introduced me to her. She goes back to the kitchen. I was sitting there, reading the paper.

Q. Gerda was sitting there, too?

A. Yes, sir.

Q. With you?

A. Yes, sir.

Mr. WARNHOLTZ. That is all, your Honor.

So, I do in open court return this card, being something in the nature of a subpoena card, marked "Defendant's Exhibit 1," for identification, return it to Mr. Zermer so that he may have it punched and get paid.

I will ask Mr. Zermer if you will kindly leave it at my office on the way home. I am at 111 West Washington Street, and give it back to me so that it may be used at a later time; a later exhibit.

Mr. FINN. I do not think the witness has to leave anything.

By Mr. WARNHOLTZ:

Q. Are you willing to, Mr. Zermer?

A. I will do it.

Q. I beg your pardon?

A. Yes.

Q. Leave it at my office, with my secretary?

A. Yes.

Q. 111 West Washington Street, Room 1010.

A. Yes.

576 Mr. WARNHOLTZ. Thank you.

Mr. FINN. That is all, Mr. Zermer.

(Witness excused.)

SIDNEY S. SHERMAN, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. FINN:

Q. Will you please state your name?

A. Sidney S. Sherman.

Q. Where do you live?

A. 1125 South Sacramento, Chicago.

Q. What is your business or occupation?

A. I am employed by the Western Union Telegraph Company.

Q. In what capacity?

A. Well, at the present time I am unassigned.

Q. What is your function with that company?

A. My regular position is that of a District Manager.

Q. You said "Postal Telegraph Company"?

A. The Western Union Telegraph Company.

Q. Calling your attention to the year 1941, in August, by whom were you employed at that time?

A. Postal Telegraph Company.

577 Q. In what capacity?

A. I was on the Clerk—on the staff of the City Superintendent as District Manager.

Q. As such did you have charge of the files of telegrams?

A. No.

Q. Were they kept under your supervision?

A. No; they were kept under the supervision of the city superintendent.

Q. Were you under him or over him?

A. Yes; I was under him as part of his staff.

Q. In the course of your duties when subpoenas were served upon your company, was it your duty to remove those cablegrams, and so forth, from the files?

A. When asked by the superintendent it was my duty to do that.

Mr. EINS. I will ask this be marked for identification.

(Document marked "Government's Exhibit 56" for identification.)

Q. First, I should like to ask you something about your system; when a cablegram comes in to your company from outside, just what operation takes place?

A. At that time we were operating under the semiauto-

578 matic system. When the cablegram is received in Chicago it comes in the form of a piece of perforated tape.

Then it is transmitted to the branch office, where we receive it in the form of a gummed tape. That is run on the regular telegram. This tape is pasted on the telegraph blank.

The ink is an indelible ink. Then we take—we took at that time a moist tissue paper and placed it over the original copy and it was run through a wringer so the tissue was an impression copy of the original message which was delivered to the addressee, and the tissue copy was to remain in our files as our copy of the telegram.

Q. That tissue copy is known as the wash copy, is it not?

A. Yes.

Q. If that a duplicate original? That is a duplicate of the original, made in the manner described?

A. That is right.

Q. That is an impression copy.

A. That is an exact duplicate.

Q. I will show you Government's Exhibit 56 for identification and ask you if you can tell us what that is?

A. This is an impression copy of a wire that was

579 received over the lines of the Postal Telegraph Company and it was delivered by that company.

Q. I will show you Government's Exhibit 51 for identification and ask you if you can tell us what that is?

A. This is the original wire that was received over the lines of the Postal Telegraph Company and was delivered by that company.

Q. Is this wash copy a duplicate of the original wire that was received and delivered?

A. This wash copy is a duplicate of the copy that was delivered. However, it is not a duplicate of this particular wire. This wire was sent to one of our branch offices, then returned to the main office. Eventually it was delivered in the form that that wash copy indicates.

Q. Well, now, I will show you another document.

Mr. Finn. Will you mark this?

(Document marked for identification.)

Q. I will show you a document marked "Government's Exhibit 57" for identification and ask you if you can tell us what that is?

A. Well, we have a series of events here. This is a message that was delivered to our branch office. Apparently it was de-
580 livered to the wrong branch, or it was delivered to a branch which subsequently closed and relayed it back to the main office. This impression copy, the last one you gave me, another copy was sent to our branch office. And that copy is the original that was delivered and this is the wash copy or the copy that was delivered to the addressee.

Q. It is a little bit complicated?

A. Yes; it is.

Q. Are all these messages contained in the wash copy—and is the address the same on them?

A. Yes; these are all the same telegrams.

Q. They are all the same telegrams?

A. It is all one telegram.

Mr. Finn. Will you mark this for identification.

(Document was thereupon marked "Government's Exhibit 58" for identification.)

Q. I show you Government's Exhibit 58 for identification and ask you if you can tell us what that is?

A. That is the delivery record of a message delivered by the Western Union Telegram Company. That is not ours.

Mr. Bertram. A different company?

Mr. Finn. Yes.

581 Q. Now, can you tell me this: In the first place, upon what date your company received that message and from where you received it?

A. This message was filed in Tokio with the controlling in-

terest of the Telegraph Company in that country, which presumably is the government of that company.

It was then turned over to the Mackay Radio Company, whose radio—who handle the lines from that country to this country.

Now, the Mackay Radio Company at New York turned this telegram over to the Postal Telegraph Company for the purpose of delivering it.

From New York it was handled by the Postal Telegraph Company through Chicago where we eventually made delivery.

Q. To whom did you make delivery, according to your records?

A. This was delivered to H. Haupt, 2234 North Fremont Street, Chicago, Illinois.

Q. What is the date upon which that message was sent from Tokio?

A. August 24, 1941.

Q. Does your record show the date on which it was received?

A. It was received here in Chicago on August 24, 1941.

582 Mr. FINN. Any objection to it?

Mr. WARNHOLTZ. No objection.

Mr. FINN. I will offer in evidence Government's Exhibits 51, 56, and 57.

Mr. WARNHOLTZ. No objection, your Honor.

The COURT. They may be received.

(Whereupon the documents marked "Government's Exhibits 51, 56, and 57," were received in evidence and are in words and figures as follows, to wit:)

583 Mr. FINN. That is all, Mr. Sherman, thank you.

Mr. WARNHOLTZ. No cross-examination.

(No cross-examination. Witness excused.)

HARRIETT CAUDLE, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. HURLEY:

Q. Will you state your name, please?

A. Harriett Caudle.

Q. Your first name is Harriett?

A. Yes, sir.

Q. Where do you live, Miss Caudle?

A. 7066 North Paulina.

Q. Calling your attention to the month of December 1941, by whom were you employed at that time?

A. Postal Telegraph Company.

Q. Postal Telegraph Company?

A. Yes, sir.

Q. At what address?

A. 650 Diversey.

Q. That is here in the city of Chicago?

A. Yes, sir.

584 Q. In the course of your employment, were you on duty on December 7, 1941?

A. I was.

Q. At this same address that you have given us?

A. Yes, sir.

Mr. HURLEY. Will you mark this for identification.

(Document marked "Government's Exhibit 59" for identification.)

Q. I will ask you whether or not somebody came into your office on that date and sent a cablegram?

A. That is right.

Q. Do you now know who that person was?

A. Yes; I do.

Q. Who was that person?

A. Why, Mrs. Haupt.

Q. Mrs. Haupt?

A. Yes.

Q. About what time did Mrs. Haupt come into your office that day?

A. About 2:45.

Q. That was in the afternoon?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Mr. BERTRAM. What was that?

Mr. FINN. December 7, 1941.

By Mr. HURLEY:

585 Q. I show you Government's Exhibit 59 for identification and ask you whether or not it is the cablegram you referred to as having been sent on December 7, 1941?

A. Yes.

Q. In whose handwriting?

A. That is my handwriting.

Q. Calling your attention to the reverse side of Government's Exhibit 59, and to the words "Accepted at Sender's risk," I will ask you who wrote that on there?

A. I wrote that.

Q. Calling your attention to the writing in red pencil in the left hand corner. Is that your writing?

A. No; that is not.

Q. I believe you said that this cablegram was sent at 2:45 in the afternoon?

A. Yes.

Q. Is this cablegram in the same condition now as it was at the time you said that you wrote it, with the exception of the red crayon in the left hand——

A. Yes, sir.

Q. And this blue pencilling—was that on there?

A. No.

Q. The figures 6.24, was that placed thereon by you?

586 A. Yes; I wrote that.

Q. And this person whom you say sent this wire, when was the next time you saw that individual?

A. In the courtroom.

Q. In whose courtroom was that?

A. Judge Campbell's.

Q. That was here in this building? Is that right?

A. Yes, sir.

Q. And that individual is Mrs. Erna Haupt; is that correct?

A. Yes.

Mr. WARNHOLTZ. At this time, your Honor, I move that all of these answers be stricken on the ground that this was not in the presence of Hans Haupt.

Mr. HURLEY. It has all been connected, your Honor. Your Honor will recall the testimony of Mrs. Kluczyk in which she said that it is the same wire that she had sent, or that she had sent this wire on that afternoon, and Mrs. Kluczyk had talked to her—she talked about sending that. The record will show the connection.

Mr. WARNHOLTZ. She sent "a" wire. We do not know if this is the one. Mrs. Kluczyk has never *has never* identified it.

The COURT. Mrs. Kluczyk is the same lady who told

587 us in this case of the wire to Herbert, that she was sending this wire?

Mr. WARNHOLTZ. "A telegram," she said.

Mr. HURLEY. That is right.

The COURT. Objection overruled and motion denied.

Mr. HURLEY. I will offer Government's Exhibit 59 in evidence.

Mr. WARNHOLTZ. May I cross-examine first?

Mr. HURLEY. You may. I am making the offer.

Cross-examination by Mr. WARNHOLTZ:

Q. Mrs. Caudle, do you remember whether or not on December 7, 1941, at 2:45 in the afternoon, you had information regarding the Pearl Harbor incident?

A. No; I did not.

Q. Do you remember when the information first came to your knowledge?

A. Yes. It was around four o'clock in the afternoon.

Mr. WARNHOLTZ. That is all. Thank you.

Mr. HURLEY. That is all. Has your Honor ruled on the offer?

The COURT. It may be received.

(Said document marked Government's Exhibit 59 was received in evidence and is in words and figures following, to wit:)

588 Mr. HURLEY. That is all.

(Witness excused.)

RALPH J. GREGG, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. FINN:

Q. Will you state your name, please?

A. Ralph J. Gregg.

Q. What is your business or occupation, Mr. Gregg?

A. I am a Special Agent of the Federal Bureau of Investigation.

Q. To what office are you assigned at the present time?

A. At the present time I am assigned to the office of Buffalo, New York.

Q. Were you engaged in that occupation on the 22nd day of June 1942, in Chicago?

A. Yes, sir; I was.

Q. Calling your attention to that date, on a Monday morning, were you in the Chicago office of the Federal Bureau of Investigation, in the Bankers Building in the city of Chicago?

589 A. Yes, sir.

Q. While there that morning, did you interview a young man by the name of Herbert Haupt?

A. I interviewed a young man who told me his name was Herbert Haupt.

Q. I show you Government's Exhibit 3 for identification and ask you whether or not you can tell us who that is?

A. Yes, sir. That is Herbert Haupt, the man I interviewed that morning.

Q. Now at that time did he tell you that he had registered?

A. Yes, sir.

Q. Did he show you anything?

A. He showed me a Selective Service Registration Certificate.

Q. Showing you Government's Exhibit 52 for identification, I ask you if you can tell us what that is?

A. This is a Selective Service Registration Certificate, which contains the same information as the card which he showed me that morning on June 22, 1942.

Q. Could you tell us whether in your opinion that is the same card he showed you?

590 A. I could not say positively, but it has the same general information as the one which he showed to me.

Mr. FINN. That is all with this witness.

Cross-examination by Mr. WARNHOLTZ:

Q. Mr. Gregg, did Herbert Haupt at that time tell you where he had come from?

A. Yes, sir; he did.

Q. What did he say?

A. He told me that he came from Mexico—he told me that he had been in Mexico for the past year.

Mr. WARNHOLTZ. That is all. Thank you.

(Witness excussed.)

CARL EGGERT, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. FINN:

Q. Will you state your name, please?

A. Carl Eggert.

Q. Will you speak loudly and distinctly? Spell the name for the reporter.

591 A. C-a-r-l.

Q. And the last name?

A. E-g-g-e-r-t.

Q. Where do you live, Mr. Eggert?

A. 3438 North Seeley.

Q. 3438 North Seeley?

A. That is right.

Q. How long have you lived there, Mr. Eggert?

A. About nine years.

Q. By the way, were you born in this country?

A. No.

Q. Where were you born?

A. Born in Germany.

Q. When did you come to the United States?

A. May 28.

Q. Do you mean May of 1928?

A. That is right.

Q. Do you know the defendant, Hans Max Haupt?

A. Yes; I know him.

Q. Will you point him out in the courtroom for us, please?

A. There he is.

Mr. FINN. Indicating for the record, the defendant.

Q. How long have you known Hans Max Haupt?
A. Since about 1936.
592 Q. Where did you first become acquainted with him, Mr. Eggert?
A. Well, I first got acquainted with him in the organization of the German War Veterans.
Q. What was the name of the organization?
A. German War Veterans of the First World War.
Q. Do you know his wife also?
A. Yes, I do.
Q. Where you an officer in that organization?
A. Yes, I was.
Q. Was Mr. Haupt also an officer in the organization?
A. He was, too.
Q. What office did you hold?
A. I was the secretary.
Q. What office did he hold?
A. He was a trustee.
Q. A Trustee?
A. Yes.
Q. Now, how frequently would your organization meet?
A. Twice a month.
Q. How often would you see Hans?
A. When if he was every time there I would see him twice a month.
Q. Do you know Erna Haupt, his wife?
A. Yes, I know her.
Q. Did you ever meet Herbert Haupt?
593 A. Yes, sir.
Q. His son?
A. Yes; I met him there, too.
Q. Where did you first meet Herbert Haupt?
A. The same place, in that organization.
Q. I show you Government's Exhibit 5 for identification, and ask you if you can tell us what that is?
A. That is Herbert Haupt.
Q. Did you also know a man named Emil Tobsing?
A. Yes, I know him.
Q. Mr. Eggert, is Mr. Tobsing living or dead now?
A. No, he is dead now.
Q. When did he die?
A. Died the first of March.
Q. Of this year
A. Yes, of this year.
Q. He was killed in an accident, was he not?
A. That is right.

Q. Did Emil Tobsing also belong to this organization of German World War Veterans?

A. Yes; he belonged to the same organization.

Q. Now, did you at any time prior to the date of June of 1942 do any work, or start to work for Hans Haupt?

A. Well, I worked for him the first time, it must be in April or May.

Q. Of what year?

A. That was 1942.

594 Q. What was the type of work that you did for him?

A. I did plastering for him.

Q. You were a plasterer, were you?

A. That is right.

Q. What type of business was Hans Haupt engaged in at that time?

A. Well, I think that he did painting and decorating, some stuff like that.

Q. Was he sort of a general contractor?

A. Well, he took the contracts all over, you know—have that other work away, you know.

Q. I see.

A. That is it.

Q. What did Emil Tobsing do for Hans Haupt?

A. Emil Tobsing did brick work for him.

Q. Now, did you learn sometime in the summer of 1941—did you learn at any time of Herbert's departure from this country?

Mr. WARNHOLTZ. Objected to as leading, if your Honor please.

The COURT. Well, it is leading in a sense, but he may answer yes or no.

Mr. FINN. Will you read the question?

(Question read.)

A. I heard about it.

595 Q. What is that?

A. I hear about it.

Q. Now, did you at any time after that have a conversation with Hans Haupt about the boy?

A. "Nein," I do not have it.

Q. What?

A. I do not have any conversation about Herbert with his father.

Q. At any time after the boy had left did you have a conversation with Hans Haupt about the boy?

A. No; I did not.

Mr. BERTRAM. I object to that. The same question the witness answered that he did not.

The COURT. He answered the same way both times. Let it stand.

By Mr. FINN:

Q. Calling your attention to June—Tuesday, June 23, 1942, were you working for Hans Haupt on that day?

A. On Tuesday, yes; I was working for him.

Q. And on how many days that week did you work for Hans Haupt, Mr. Eggert?

A. Well, in the morning, Monday, Tuesday, Wednesday, on that job, and in the—then, Thursday, Friday on the other job.

Q. There were two separate jobs, were there?

A. That is right.

596 Q. One was Tuesday and Wednesday?

A. Monday, Tuesday, and Wednesday.

Q. And then another job?

A. Thursday and Friday.

Q. Saturday what?

A. Thursday and Friday.

Q. Now, calling your attention to the morning of June 24th——

Mr. FINN. Strike that.

Q. Calling your attention to the afternoon of Wednesday, June 24, did you have a conversation with Hans Haupt?

A. Yes; he came to my job where I was working with Emil Tobsing.

Q. Will you tell us what conversation you had at that time?

A. He asked me how far I was with my work, helped me clean up, told me after then we have Thursday morning another job.

Q. What, if anything further was said at that time with reference to arrangements on this other job?

A. Then he said be this Friday morning at his house.

Q. What morning was that when you were to be at his house?

597 A. The next morning—Thursday morning.

Q. Calling your attention then to Thursday morning, that would be the 25th of June 1942, did you go to his house?

A. Yes; I did.

Q. At about time did you arrive in front of his house?

A. At ten minutes after seven, five or ten minutes, quarter after seven.

Q. Did any one go there with you?

A. Emil Tobsing was with me.

Q. Did any one go there with you?

A. Emil Tobsin' was there with me.

Q. All right. Will you tell us just what took place that morning there, that morning?

A. We were standing in front of the house. We waited for Hans to come out, to bring us to the place we had to work that day,

and we were standing about ten minutes or so. Then Herbert Haupt came out of the house there where he is living.

Q. You say Herbert Haupt came out?

A. That is right.

Q. Is that the same man that you have previously identified?

A. That is right, he is.

Q. On Government's Exhibit 3?

A. Yes.

598 Q. Now, you say he came out of the house?

A. That is right.

Q. Then what happened?

A. Then he went to his car which was standing, a black car, in the car in front of the house, a little north of the house. Then he went to the car and he was standing there at the car.

Q. Did you have any conversation with him?

A. No. We says just "good morning" that was all.

Q. All right. Now then what happened, Mr. Eggert?

A. Then a minute or two later Hans came out of the house.

Q. What did he do then?

A. Then he went to Herbert, where Herbert was standing. We go, Emil and I, we went to the other car where Hans—where he wanted to drive away.

Q. How long did Hans continue to stay with Herbert?

A. Well, it was a couple of minutes.

Q. Then where did he go?

A. Then Herbert drove away. Hans came to the car. We went in. Drove away, too.

Q. Was that—do you know Hans Haupt's address?

A. Hans Haupt?

Q. Yes.

A. Well, yes; a dark suit. That is all.

599 Q. You misunderstand me. Did you know what his address was?

A. No.

Q. Where he lived?

A. No, I do not; I do not remember the number. 2236 or so, I do not know.

Q. What street?

A. Fremont Street. Right?

Q. Now, did you work that day for Hans Haupt?

A. That is right.

Q. And when did you finish up that job?

A. On Friday afternoon.

Q. Now, did you work for him on Saturday or not?

A. No.

Q. Now, when was the next time you saw Hans Haupt?
A. That was on Sunday, Sunday, quarter after twelve.
Q. That would be on the 28th day of June, would it not?
A. That is right, on the 28th day of June.
Q. Where did you see Hans Haupt on that occasion?
A. I saw him standing in front of the Roscoe Tavern, Roscoe Street, 2025 Roscoe.
Q. Roscoe?
A. That is right.
Q. Was he standing alone or with some one else?
A. He was standing with Emil Tobsing there.
600 Q. Did you go up there afterwards?
A. Yes, on that day I go up to them two fellows.
Q. Did you join them?
A. Yes; I joined them.
Q. Where did you go from there?
A. Then we go into the tavern.
Q. Well, where did you sit?
A. Right on the corner, right on the window.
Q. What?
A. On the window, on the corner, at the corner of the bar.
Q. At the corner of the bar?
A. Yes.
Q. Will you tell us just how you were sitting there?
A. I was sitting in the middle. Emil was to my left and Hans was on the right.
Q. Now, did you have any conversation while you were sitting there at the bar?
A. No; we had a glass of beer, you know. Then Hans told me that he brought my money along from that job what I finished up on Wednesday.
Q. How much money did he pay you for that job on Wednesday?
A. $95.00.
Q. Did he pay you in money there?
A. Yes; he paid me.
601 Q. What did he give you?
A. Two fifty dollar bills.
Q. Now, how long did you stay there at the bar before anything else took place?
A. Well, a couple of minutes, two or three minutes.
Q. Then will you tell us what happened?
A. Hans told me he wanted to tell me something, that I should go with him in that back room; and I go in there, in the back room with him. I went in the back room and he told me.

Q. This fellow, how far did you go from the place where you had been sitting at the bar to the back room?

A. Well; maybe twenty-five feet.

Q. Just how did Hans Haupt talk to you?

A. Hans Haupt said, "Carl" he said, "I got $900 my own money"——

Q. What was it?

A. He said, "Carl, I have $900 of my own money. You can do me a favor and keep it for me. Then I am afraid now the FBI comes in my home and takes it away."

Q. Did he say this in a loud voice? How did he speak?

A. Just so I could understand it.

602 Q. All right, what did you say to him?

A. Well I said, "If it is your own money I keep it fo. you."

Q. Did he give you any money there?

A. No; he did not had it there."

Q. Was there any further conversation there?

A. No; he said he would bring it over after that.

Q. Over to where?

A. To my house.

Q. All right. Did you leave the tavern?

A. Then we left the tavern, the three of us.

Q. When did you next see Hans Haupt?

A. I saw Hans Haupt about three quarter later, half an hour, three quarter later in my house.

Q. Where is the house located?

A. 3438 North Seeley.

Q. Tell us what happened; were you at home?

A. I was home, sitting in the kitchen, on the table.

Q. Who else was home with you?

A. My wife was home with me.

Q. How did you know he was there?

A. Well, the bell was ringing, my wife got on the door, let him in.

Q. Will you tell us just what you did then?

603 A. Then my wife came back in the kitchen, told me that Hans Haupt were there, so I stay in the kitchen—I went with Hans to the living room.

Q. What if any conversation did you have with Hans Haupt in the living room?

A. Just said again "Here is $900. I want to brings it to you. Please keep it for me," and that is all what he said.

Q. Did he hand you anything?

A. He handed me an envelope.

Q. Could you tell whether there was anything in it or not?

A. I do not know, it was closed.
Q. What?
A. It was closed.
Q. Closed?
A. Yes.
Q. Was it an empty envelope or was there anything in it?
A. There was something in it, could feel it.
Q. Then, was there any further conversation there?
A. No. There was no further conversation. Then Mr. Haupt said not got much time, his wife was waiting in the car downstairs, and he went out.
Q. Then what did you do with the money?
Mr. WARNHOLTZ. That is objected to, your Honor.
Mr. FINN. Excuse me, I will withdraw the question.
604 I am sorry.
Q. What did you do with that envelope?
A. I put that envelope in the dresser.
Q. Did you at that time, before you put it in the dresser examine it or not?
A. No.
Q. How long before you opened it and looked at it again?
Mr. WARNHOLTZ. That is objected to.
A. It must be the Tuesday night.

By Mr. FINN:

Q. Tell us what you did on Tuesday night?
A. Tuesday, I took it out so I was going to count it there. I want to see what was in it.
Q. Will you tell us what was in that envelope?
Mr. WARNHOLTZ. Just a moment. That is objected to, violates the best evidence rule. It should be produced, if there was anything in it.
Mr. FINN. What?
Mr. WARNHOLTZ. You should produce whatever was in it.
Mr. FINN. I do not see any necessity for producing the money that was in the envelope.
Mr. WARNHOLTZ. Money, he does not know whether it is——
Mr. FINN. He will testify.
605 Mr. WARNHOLTZ. When?
Mr. FINN. We will prove it was.
The COURT. Overruled.

606 By Mr. FINN:

Q. Will you tell us what was in this envelope?
A. Eighteen $50 bills in it.
Q. What is it?
A. Eighteen $50 bills.

Q What did you do after you had counted these eighteen $50 bills; what did you do?

A. I put them back in it.

Q. How long did you keep it?

A. I kept it about four days, up until Thursday night.

Q. Then what happened?

A. When two agents of the FBI came there——

Mr. BERTRAM. I object.

Mr. FINN. Go ahead.

The WITNESS. When I came in two agents of the FBI were in my house.

Mr. BERTRAM. Just a minute.

Mr. FINN. What did you do?

Mr. BERTRAM. Your Honor, I object to what took place when Hans Haupt was not present.

The COURT. Overruled.

By Mr. FINN:

Q. What did you do when the agents of the FBI came there—what did you do with this envelope?

A. Why, I gave it to him.

607 By Mr. FINN:

Q. After Herbert Haupt had left, and any time up until the time when you say him on the 25th of June, did you have a talk or conversation with Hans Haupt about where the boy had gone?

A. No, I didn't.

Mr. BERTRAM. Objection. That has been three times it has been asked and the witness told, "No," and it is leading.

Mr. FINN. I would like to refresh the memory of the witness.

The COURT. Yes.

By Mr. FINN:

Q. Mr. Eggert, you testified at the last trial, did you not?

A. That is right.

Q. I will ask you these questions and do they or do they not refresh your recollection on that subject:

"Question: Did you have a conversation or talk with Hans Haupt and he told you where his son was?

"Answer: No; not directly. I did not ask him.

"Question: Did he tell you?

"Answer: He told me his son was——

"The COURT. Fix the time now——"

608 Mr. BERTRAM. If the court please, I want to object to this method, counsel bringing in here testimony of the last trial. The witness has answered three times clearly that he did not.

The COURT. He has a right to refresh his memory. Overruled.

Mr. FINN. And these questions and answers:

"Question: Tell us about when this was that he talked to you about it.

"Answer: It must be, oh, that time when I was working for him. I mean when I took that work over from him in some meetings.

"Question: That would be in this year sometime?

"Answer: It was this year.

"Question: Did he tell you about his son at [illegible] time?

"Answer: Well, he told me his son was in Mexico.

"Question: After that occasion, did you later have a talk with him—did he talk to you about where he was?

"Answer: Did not talk to me; I heard about that.

"Mr. SHORT. Object to that, your Honor.

"The COURT. Sustained.

"Question: Did Hans Haupt talk to you later about where his son was any other place besides Mexico?

"Answer: He told me later his son was in Japan.

"Question: Did he tell you at that time where his son was going?

"Answer: He was going to Germany."

By Mr. FINN:

Q. Do those questions and answers refresh your memory on that subject, Mr. Eggert?

A. That is right.

Q. I will ask you again, therefore, after the boy had left, did you have any conversations with Hans Haupt on the subject where his boy was going?

A. Not directly.

Q. Well, did you hear it at any time?

A. I hear about it; yes.

Q. Did you hear him——

Mr. BERTRAM. I move that this be stricken.

Mr. FINN. Just a moment, please, will you let me finish my question?

Mr. BERTRAM. I am sorry.

The COURT. Let him finish his question.

By Mr. FINN:

Q. Did you hear at any time Hans Haupt tell either you or anyone else about that?

A. That is right; I heard about which he told us his son was in Mexico.

Mr. BERTRAM. It is plain the witness does not understand the question.

The COURT. Well, we will find out. Find out what particular one, who was present, and what was done.

By Mr. FINN:

Q. Where were you when you heard this?

A. That must be at the meetings of the organizations.

Q. Who was there at that time?

A. Well, there was quite a couple of fellows more.

Q. Who were there; were you there?

A. I was there, yes.

Q. Was Hans Haupt there?

A. He was there, too.

Q. Who else was there, if you recollect?

A. Well, I couldn't say the names; there was a couple of fellows standing around.

Q. Who was doing the talking?

A. Hans was doing the talking.

Q. Who was he talking to?

A. To some fellows that asked him.

Q. What did he say?

A. They asked if his son was in Mexico.

Q. What did he say—tell us the words he said?

A. Well, he said that his son was in Mexico. He
611 wanted to go to Germany.

Mr. FINN. I think that is all with this witness.

The COURT. Take a short recess, ladies and gentlemen.

(Thereupon a recess was had and on the coming in of court after recess, the trial of this cause was resumed as follows, that is to say:)

The COURT. Proceed.

Cross-examination by Mr. WARNHOLTZ:

Q. Mr. Eggert, you stated Hans Haupt was a contractor?

A. Well, he was working for himself.

Q. He also personally did manual labor, did he not, like laying bricks, painting, decorating, et cetera?

A. That is right.

Q. During that week beginning with June 23, Monday, to June 27, Saturday, in 1942, you testified you worked, I believe, on Monday, Tuesday and Wednesday and Thursday and Friday for Mr. Haupt?

A. That is right.

Q. And now where did you work on Monday, if you recall?

A. I think I did.

Q. Where? Where?

A. On Wellington Avenue.

612 Q. On Wellington Avenue?

A. Yes, sir.

Q. Did you on that day see Hans Haupt out there?

A. No.
Q. And Tuesday, where did you work?
A. Same place.
Q. It was on that day—on that day, did you see Hans Haupt there?
A. No, I didn't.
Q. On Wednesday, where did you work?
A. Same place.
Q. Did you on that day see Hans Haupt?
A. Yes, I saw him in the afternoon.
Q. About what time, do you have any recollection?
A. About four o'clock.
Q. About four o'clock?
A. Yes; I think so.
Q. About how long did you stay there?
A. Well, he was there a half hour, and also talked to me and asked if he could help me clean up.
Q. Did he come in an automobile?
A. Yes, he came in his car.
Q. And on Thursday, where did you work for him?
A. He was working about 300 south, I can't remember the exact place no more. It must be a half block east of Western Avenue, apartment building.
Q. Was that on Oakdale?
613 A. I don't know what street it is. I don't remember that now.
Q. Do you recollect who was with you there?
A. Emil Tobsing.
Q. And who took you to the job?
A. Hans Haupt.
Q. In the morning?
A. Yes, sir.
Q. In his car?
A. Yes, sir.
Q. What type of car was it, Mr. Eggert?
A. We tore two chimneys down and built it up again.
Q. A brick-laying job, would you say?
A. Yes; brick-laying job, that is right.
Q. And did you take your material and equipment along?
A. Yes; we took a couple of horses along.
Q. Some horses?
A. Yes, sir.
Q. Those wooden horses?
A. Iron horses at that time.
Q. Iron horses?
A. Yes.

Q. Did you take any cement along?
A. No; I think that was on the place there.
Q. Where did you put that, into Hans Haupt's car?
A. The horses we put on the top of his car.
Q. The horses you put on top of his car?
A. Yes, sir.
614 Q. Do you remember whether or not he was at that time driving a Pontiac?
A. I don't know what kind of car.
Q. Or Plymouth?
A. I don't know. I never had a car and I don't know.
Q. When you arrived at that job on Thursday, what did Hans Haupt do?
A. He helped us put the scaffolding up on the roof.
Q. About how long did he stay at that job with you?
A. About eleven o'clock, I guess.
Q. Then what did he do then, Mr. Eggert?
A. Then he went away.
Q. Did he say where he was going to?
A. He said he had to go to another job.
Q. Did he say where the other job was?
A. No; he didn't say, and we didn't ask him either.
Q. Did you see him again on that day?
A. No; not on that day.
Q. The next day, Friday, did you see Hans Haupt that day?
A. He came about 10 o'clock in the morning.
Q. Yes. To this job?
A. To the job that was started on Thursday.
Q. Where was that located?
A. Same job.
Q. Where was it?
615 A. It must be down on Oakdale there,—I don't know the street, you know.
Q. That wasn't any more, 300 or 400 south, was it?
A. Yes; I think the job Thursday and Friday.
Q. Thursday and Friday?
A. Yes, sir.
Q. How long did Hans Haupt stay there on that day?
A. Oh, about 2 o'clock.
Q. About 2. Did he say then what he was going to do after that?
A. No; we went with him to another job together.
Q. Did you go with him?
A. Yes, sir.
Q. In his car?
A. In his car; yes.

Q. And where was that job?
A. I can't remember where it was.
Q. What, if anything, did you do there?
A. Well, they had to point a chimney out there, and took a couple of courses off, and put a new course on it.
Q. Who was present at the time when that work was done?
A. Emil Tobsing and Mr. Nolan.
Q. Was Hans Haupt present?
A. He was there, too.
Q. He had been working there?
A. Yes.
Q. Mr. Nolan, was he also a contractor?
A. He is a contractor; yes, sir.
616 Q. After you got through with that chimney job there, what did you do?
A. He drove us—Hans Haupt drove us to a job on Burling Street.
Q. Then he drove you still to another job, and about what time did you arrive?
A. About 4:30.
Q. Whom did he drive there?
A. Emil Tobsing and me.
Q. What, if anything, happened, when you arrived there about 4:30?
A. He just told us what we had to do there.
Q. When did he tell you, when did he state to do that?
A. I guess Emil Tobsing was working there before.
Q. Well, were you supposed to work there the same day?
A. No; the same day getting them all right.
Q. Did he tell you what to do?
A. On Monday.
Q. Monday of the week following?
A. Yes; because he don't work on Saturday.
Q. And how long did you stay there?
A. All day.
Q. On Friday, this job was on Burling?
A. We were not there long, just about twenty minutes.
617 Q. Then what did the three of you do: Mr. Tobsing, Mr. Haupt, and yourself?
A. I think Mr. Hans Haupt drove up some place, and we took the streetcar to go home.
Q. Did you see him any more that day?
A. No.
Q. Did you see him on Saturday, the day following?
A. No.
Q. I now call your attention to that Sunday morning, June

28th, 1942, when you met Mr. Haupt in front of the Roscoe Tavern?

A. That is right.

Q. I have picked the place and time for you, have I?

A. Yes.

Q. Did you at that time know that Herbert Haupt had been arrested the day before?

A. No; no; I didn't.

Q. You did not read it in the Sunday newspapers?

A. Well, I read the Sunday newspapers, but I didn't know.

Q. You had not read the Sunday newspapers as yet on that day?

A. No; I didn't.

Q. Did you read it in the afternoon?

A. I think I did.

618 Q. Did you find out in the afternoon Herbert Haupt had been arrested?

A. No; I didn't read it.

Q. When did you first hear that?

A. What?

Q. When did you first hear Herbert Haupt had been arrested?

A. It was in the FBI the following week, on Thursday.

Q. You didn't hear about it at all before that?

A. No; I didn't.

Q. Don't you read the newspapers daily?

A. Yes; but I didn't read it.

Q. When Hans gave you this envelope at your home on Sunday, June 28, where was it in you home; in what room?

A. In the living room.

Q. At that time, where was your wife?

A. In the kitchen.

Q. Did she see Hans Haupt give you this envelope?

A. No; she didn't.

Q. Did she hear the conversation——

Mr. FINN. Just a minute. I will object to this and ask that it be stricken because this witness cannot testify whether his wife saw it or did not see it. He may testify as to her position.

The COURT. Well; I will let it stand. This is cross-examination.

By Mr. WARNHOLTZ:

619 Q. As far as you know, could your wife hear any conversation you may have had with Hans at the time he gave you this envelope?

A. No, she couldn't

Mr. FINN. I object to that on the same ground.

The COURT. The answer may stand.

By Mr. WARNHOLTZ:

Q. What was your answer?

A. No, she couldn't.

Q. Referring to the conversation, which according to your testimony was had between Hans Haupt and a number of people, at which time Hans said that he was going to go to Germany—that Herbert Haupt was going to Germany, he was in Mexico and was going to Germany—would like to go to Germany——

Mr. FINN. Just a minute. I object to that further, he was going to Germany, not he would like to go to Germany.

Mr. BERTRAM. The record will show.

Mr. WARNHOLTZ. He said "or."

Mr. BERTRAM. The record will show. I object. You stated it, I don't recall it the way you do.

The COURT. Of course, the record will show it now being put in.

Mr. WARNHOLTZ. I will withdraw that question and ask it differently.

620 Q. I will refer to your testimony which you gave a short time ago here today wherein you spoke about Herbert Haupt, and in connection therewith mentioned Germany—let me ask you, when was that conversation had?

A. It was about in the summertime of 1941, I guess.

Q. 1941. It was before the United States entered into any war?

A. The United States entered into the war in December.

Q. 1941?

A. That is right.

Q. So it was before the United States entered into any war?

A. It was in the summertime.

Q. Did you hear Hans Haupt make that statement that Herbert was in Mexico and he was going to go to Germany; did you hear it at that time?

A. Well, I hear it.

Q. Did you hear Hans make that statement?

A. That is right. He said it, too.

Q. You have made statements to the agents of the Federal Bureau of Investigation concerning the subject matter that you testified about just now, have you not?

A. Yes, I did.

621 Q. Do you know about how many such statements you signed?

A. I don't know yet.

Q. Well, would you say three or four?

A. Well, maybe it was three or four.

Q. Where was that, where you signed those?

A. In this Bureau of Investigation in the Bankers Building.

Q. In the office of the Federal Bureau of Investigation?

A. That is right.

Q. You are an American citizen?

A. Yes; I am.

Q. The agents questioned you regarding the very same facts concerning which you testified today, did they not?

A. Yes, they did.

Q. And you answered their questions?

A. I did.

Q. And you told them the truth?

A. Yes; I did.

Q. Did they, while so questioning you, tell you that you would lose your citizenship papers because you were connected with this matter?

A. I think they did, once.

Mr. BERTRAM. What is the answer?

By Mr. WARNHOLTZ:

Q. Well, do you know whether or not they did; did they?

A. When was that?

622 Q. How is that?

A. I don't understand that.

Q. They did tell you you would lose your citizenship papers being connected with the matter?

A. Well, I thought so; it was on account of it.

Q. How is that?

A. They didn't say on account of this matter that I was in this case, you mean.

Q. What did they say?

A. They said just I could lose my citizenship papers.

Q. Did they tell you, you would be sent to a Concentration Camp?

A. No.

Q. Did they say anything about a Concentration Camp?

A. No; not to me.

Q. Mr. Egger, you testified concerning this matter about one year and a half ago, did you not, in the case of United States against Hans Max Haupt and several others?

A. That is right.

Q. Well, will this refresh your memory; I will now read to you some testimony which you gave at that time, referring to this matter of talking with Mr. Haupt regarding Herbert, you stated at one time you had discussed with him some time in 1942,

623 where Mr. Haupt told you Herbert was in Japan. That is right. Did you—— That is right. That is right. I will give you the answer you gave. "That is right" was your answer. Do you know where this discussion took place?

No; I don't, I can't say.

Had you heard it from somebody else before?

A. No; I didn't.

Q. And then you state that later on he told you Herbert was going to Japan. That is right. Did he say he thinks he may be going to Germany or did he in any way say he was going to Germany? He was going to Germany. Did he tell you he was? No. When was it about—was that? It must be then after the time. I can't say right then when it was. Well, was that the time? I don't remember that either. Maybe one meeting, and maybe at a meeting, or maybe in some saloon I met him, I can't remember that day where it was. But you do remember he said he is going to Germany. That is right. He told you that after Herbert, after he had told you Herbert is in Japan. That is right.

621 Q. When he was in Japan already before you had the discussion regarding Herbert being in Japan, did you talk with him about where Herbert was? I did not. You did not? No. Did you ever inquire of him? No. Had you heard from others that he had left, he was not in Chicago any more? I heard from other people, that they say he was in Mexico, and after a while I hear from other people he was in Japan. Did you hear from any other people he was going to Japan? What was the last question—— Did you hear from any other people he was going to Japan? I didn't, no; I just heard he was there already.

Did you ask Mr. Haupt what Herbert was going to do in Japan? No. Did he tell you? Did he tell you he just went to Japan? He didn't say what he wanted to do. Did this surprise you? No; I wasn't a sort of inquiring of Hans Haupt about his affairs, familiar affairs, you know. You talked very frankly—— You talked frequently to members of the Federal Bureau of Investigation during the last—since June 1942, did you? Very often. Yes; I did. Did they tell you at that time that you might lose your citizenship papers? They did. And would be interned in a Concentration Camp? They did.

625 Mr. WARNHOLTZ:

Q. Does that refresh your memory?

A. I can't recollect no more, and those items they would send me to a concentration camp.

Q. You remember that, you say?

A. No; I don't remember.

Q. You do not remember that now?

A. No.

Q. When you gave your answer at the time, did you tell the truth?

A. I tell the truth.

Q. How did you happen to get to this courtroom; did you get a telephone call to come down here?

A. No; I get a postal card.

Q. Have you got that post card with you?

A. Yes; I have.

Q. May I see it? I will ask that this be marked for the purpose of identification as "Defendant's Exhibit No. 3" for identification.

When did you first see this Defendant's Exhibit No. 3?

A. Well, I don't know when it was.

Q. Well, where did you first see it?

A. In my home.

Q. Did anybody bring it to you?

A. Yes.

Q. To you personally?

A. Yes; yes.

626 Q. And then you read it?

A. That is right.

Mr. WARNHOLTZ. I wish to read into the record from this card the following: "You are required under penalty to appear as a witness on behalf of the United States in the above mentioned court, in room 450, United States Courthouse, Chicago, Illinois, on May 13th—" 13th, then, is dashed out—and 18 is written behind it, "1944, at 10 o'clock, A. M."

Did you appear in this courthouse in this building on the 18th?

A. Yes; I did.

Q. Did you go to room 450?

A. I did.

Q. Was that a courtroom?

A. It wasn't a courtroom; no.

Q. What was it?

A. It was an office where we have to go before we come up here in any courtroom.

Q. Was that the office, the office of the United States District Attorney?

A. Well, I think it was on the fourth floor.

Q. What is?

A. That is the office of the United States——

Q. District Attorney?

A. Yes, sir.

Q. Did you on that day appear anywhere in court?

A. No; I didn't.

627 Q. Before any judge?

A. No; I didn't.

Q. Whom did you meet when you went there to Room 450?

A. I met Mr. Flynn.

Q. Mr. Flynn, you mean—one of these gentlemen here?

A. That is right.

Q. About how long did you stay there?

A. Oh, one hour.
Q. One hour?
A. Yes, sir.
Q. And you went somewhat over the subject matter of the testimony today, is that correct?
A. That is right.
Q. You stayed there about one hour?
A. Well, one hour; waiting time, too.
Q. About how long did you discuss the matter?
A. Oh, about ten minutes, fifteen minutes.
Q. Did they show you what you testified to at the last trial?
A. No; they didn't give me anything in hand; they read it to me.
Q. Was it what you testified to the last time?
A. Yes, sir.
Q. Were you told by anyone in that office on what day you were to go, to appear in court?
A. Yes; I think so.
628 Q. Well, would it refresh your recollection if I asked you if it was to be on the 22nd day of June?
A. The 22nd of June; that is right.
Q. Of May, 1944?
A. May; May; yes.
Mr. WARNHOLTZ. That is all, as far as the cross-examination is concerned.
Q. For the information, may I ask you, Mr. Eggert, after you have given your testimony, if you will kindly let me have the card personally, so that I may use it personally in this trial?
A. O. K.
Q. Either bring it to my office or some way see that I get it on your way home.
A. All right.
Mr. WARNHOLTZ. Thank you.
Mr. FINN. Just a moment.

Redirect examination by Mr. FINN:

Q. Did any of the agents of the Federal Bureau of Investigation, or did anyone with the office of the United States Attorney ever ask you to tell anything on the witness stand which was not the truth?
A. No.
Q. I believe when you were down here on the 14th, was it?
A. Yes.
629 Q. By the way, did you know that the matter was—were you informed by telegram that the case was set over on the 15th to the 22nd, did you receive a telegram?

A. I get the telegram, too, before this card.

Q. And when you were down here on the 18th and spoke to me, I believe I told you, did I not, that you wouldn't be needed Monday, we would try and let you know by telephone, is that correct?

A. That is right.

Q. We have called you several times, did we not, to tell you it wasn't necessary to come down?

A. That is true.

Mr. FINN. Thank you very much.

Mr. WARNHOLTZ. Just a moment, please.

Re-cross-examination by Mr. WARNHOLTZ:

Q. Does that little card show you were to appear on the 15th, or what is the first date shown there?

A. 13th.

Q. 13th; that is right; that is all.

Mr. FINN. That is all.

The WITNESS. O. K.

630 DORA EGGERT, called as a witness by the Government, after having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. FINN:

Q. Will you state your name, please?

A. Dora Eggert.

Q. Where do you live, Mrs. Eggert?

A. 3438 North Seeley Avenue.

Q. You are the wife of Carl Eggert, who just left the stand; is that correct?

A. Yes.

Q. Calling your attention to Sunday, June 28th, 1942, were you in your home shortly after 12 o'clock on that day?

A. Yes; I was.

Q. Did anyone come to your home?

A. Yes; Mr. Haupt came to our home.

Q. Which Mr. Haupt is that?

A. Hans Haupt.

Q. Do you see him here in the courtroom?

A. Yes; I do.

Q. Will you point him out, please?

A. Over there [indicating].

631 Q. Had you received a telephone call from Mr. Haupt on that day, earlier?

A. No.

Q. All right, what time was it when Mr. Haupt came to your home?

A. It was about between one and two o'clock.

Q. How do you know he was there?

A. Well, he rang the bell and I opened the door, and let him in the house.

Q. Did you let him in?

A. Yes.

Q. How long had you known Hans Haupt?

A. Oh, about four years.

Q. Where had you first met him?

A. At some gatherings from the organization my husband belongs to.

Q. What German organization is that?

A. The German World War Veterans Association.

Q. Do you know Erna Haupt, his wife, also?

A. Yes, sir.

Q. Did you know Herbert Haupt?

A. I know the Haupt boy; I knew and talked to him.

Q. Had you met him?

A. Yes; I seen him several times.

Q. Now, you remember Mr. Haupt there on that occasion, do you?

A. Yes; I did.

Q. Where did he go when he came in?

632 A. I called my husband. He wants to talk to my husband, and they were both in the front room.

Q. They both were in the front room?

A. Yes, sir.

Q. Where did you go?

A. I went back in the kitchen.

Q. I take it, you didn't hear that conversation?

A. No; I did not.

Q. How long did Hans Haupt remain in your house on that day?

A. About a few minutes; about two or three minutes.

Q. Were you present on the occasion that next week when the agents for the Federal Bureau of Investigation come over to your home?

A. Yes; I was.

Q. What did they do; what did you see them do while you were there?

A. Well, they came in the house.

Mr. WARNHOLTZ. Well, just a moment please. I will renew my objection that the statement was not in the presence of Hans Haupt.

The COURT. Overruled.

Mr. FINN. I don't want you to give any conversations.

Q. Just tell us what was done there.

633 A. They came in the house. They were waiting for my husband. He wasn't home, then. When my husband came home, they asked for the money——

Mr. WARNHOLTZ. I object, your Honor, to that conversation.

The COURT. Sustained.

By Mr. FINN:

Q. Just what was done by your husband?

A. They asked for the money, and my husband——

Mr. WARNHOLTZ. I object and ask that it be stricken out.

The COURT. Sustained.

By Mr. FINN:

Q. Mrs. Eggert—may I instruct the witness, your Honor?

The COURT. Yes.

By Mr. FINN:

Q. Mrs. Eggert, you are not permitted to testify what was asked or what was said or anything of that character. Just tell us what was done. What did your husband do?

A. He gave them the money.

Mr. WARNHOLTZ. That is objected to, your Honor. That is a conclusion, "He gave them the money."

Mr. FINN. All right. We will go into it.

Q. Did you see what your husband did to them?

A. Yes; I did. I was present.

Q. Did anyone open up an article? What was it

634 your husband handed to them?

A. Money.

Q. Did you see the money?

A. Yes.

Q. Did you see them count it?

A. Yes.

Q. How much money was there?

A. I don't know. It was $50 bills. It was $900.

Mr. FINN. That is all.

Cross-examination by Mr. WARNHOLTZ:

Q. Have you seen $50 bills before, Mrs. Eggert?

A. Not many of them.

Q. Did you take any in your hand and examine it when it was turned over?

A. No; I didn't touch the money.

Q. How far were you from where it was turned over?

A. It was standing in the dining room, and they put on the table the money.

Q. Did you look at it?
A. Yes.
Mr. WARNHOLTZ. That is all.
Mr. FINN. That is all with this witness.
The COURT. We will recess at this time, ladies and gentlemen, until 2 o'clock. In the meantime, do not discuss the case nor permit anyone to discuss it with you and return here at 2 o'clock, please.
(Thereupon a recess was had to the afternoon of Wednesday, May 31, 1944, to 2 o'clock, P. M.)

* * * * * *

635 In the District Court of the United States for the Northern District of Illinois, Eastern Division, at Chicago

UNITED STATES OF AMERICA

vs.

HANS MAX HAUPT

Before Hon. JOHN P. BARNES, Judge, and a Jury

Wednesday, May 31, 1944, 2:00 o'clock P. M.

Parties met pursuant to recess.
Counsel present: Mr. J. Albert Woll, United States District Attorney for the Northern District of Illinois, Eastern Division, at Chicago, and Mr. Earle C. Hurley, and Mr. Richard G. Finn, Assistant United States District Attorneys for the Northern District of Illinois, Eastern Division, at Chicago, appeared for the United States of America. Messrs. Paul A. F. Warnholtz, Frederick J. Bertram, appeared for the Defendant.

* * * * * *

636 (Thereupon the following proceedings were had in the courtroom outside the presence and hearing of the Jury:)
Mr. WOLL. The other day we mentioned, your Honor, our desire to talk to this Esther Froehling, and you indicated at that time you would allow it.
The COURT. Is she here?
Mr. WOLL. She is outside, your Honor.
The COURT. Call her in.
Mr. WOLL. Shall I talk to her now, your Honor?
The COURT. What is the young lady's name?
Mr. WOLL. Esther Froehling.
The COURT. What is your name, young lady?
The YOUNG LADY. Esther Froehling.
Mr. WARNHOLTZ. Esther Froehling.

The COURT. The District Attorney wants to talk to you before he puts you on the stand. You may, if you like, step back there with him, and talk with him. You don't have to talk with him unless you want to. He wants to talk to you before he puts you on the stand. You don't have to talk to him. You don't have to do that.

Mr. WOLL. Do you want to talk to me?

The COURT. Have you any objection to talking to him before going on the stand?

637 (The witness shrugged her shoulders and shook her head up and down.)

Mr. WARNHOLTZ. May I suggest the grandmother be allowed to be with her while they talk with her?

The COURT. No; just one of you.

Mr. FINN. So that the record will be clear, your Honor, on this subject: The last question asked by the Court was to the witness, and was, "Do you have any objection to talking to the United States Attorney," and she shrugged her shoulders and her head, rather, in a negative manner, as I would indicate she did not have any objection; is that correct, your Honor?

The COURT. That is right. I think I asked her a question and she indicated she had no objection.

Mr. WOLL. Thank you, your Honor.

The COURT. Bring in the Jury.

(Thereupon the following proceedings were had in the court room in the presence and hearing of the Jury:)

Mr. HURLEY. Mr. Fletcher.

638 ELMER R. FLETCHER, called as a witness by the Government, after having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. HURLEY:

Q. State your name.

A. Elmer R. Fletcher.

Q. You are a Special Agent for the Federal Bureau of Investigation, are you not?

A. Yes, sir.

Q. How long have you been such a Special Agent?

A. Since the 29th of December, 1941.

Q. Now, calling your attention to the date of July 2, 1942, did you go to the home of Carl Eggert on that day?

A. Yes; I did.

Q. With whom did you go there?

A. With Special Agent Frank Meech.

Q. What was the address of Mr. Eggert, do you recall?

A. 3488 North Seeley.

Q. What time did yourself and Special Agent Meech arrive at Mr. Eggert's home?

A. Approximately 4:30 P. M.

Q. And who was there when you arrived?

A. Mrs. Carl Eggert.

639 Q. Did you remain in the home at that time?

A. Yes; I did.

Q. And did anyone else come into the Eggert home while you and Agent Meech were there?

A. Yes; Mr. Carl Eggert come in.

Q. What time did he come in?

A. Approximately 5:30 P. M.

Q. Did you, yourself, and Agent Meech have a conservation with Carl Eggert after he had come in?

A. Yes; we did.

Q. And after this conversation, what, if anything, was done, if you know?

A. After the conversation, Mr. Eggert went into his dining room to a small cabinet and obtained a small wooden box, which he placed on the dining room table, and from this box he took eighteen $50 bills.

Q. And who was present there at the time that Carl Eggert gave you these eighteen $50 bills?

A. In addition to Mr. Eggert, there was Mrs. Eggert and Special Agent Meech.

Q. That was in the dining room, on the dining room table; is that correct?

A. Yes, sir.

Q. And after you had received this money from Mr. Eggert, what did you do after that?

640 A. After he gave us the money, we made a list of all of the bills, recorded the serial numbers there in Mr. Eggert's presence, and this list was signed by Mr. Eggert and witnessed by Special Agent Meech and myself.

Q. Did you leave and Special Agent Meech leave?

A. Yes; we left immediately thereafter.

Mr. HURLEY. Cross-examine.

Mr. WARNHOLTZ. No cross-examination.

Mr. HURLEY. Agent Meech.

I might say at this time, if the Court please, I will ask the court's permission to recall this witness later on, on an entirely different subject matter, and the same applies for this witness here.

Mr. BERTRAM. Did you hear what counsel said?

Mr. WARNHOLTZ. No; I am sorry.

Mr. HURLEY. I intend to recall Agent Fletcher and Agent

Meech later on in this case on an entirely different subject matter. I am trying to expedite the proceeding.

The COURT. Any objections?

Mr. WARNHOLTZ. None, Your Honor.

641 FRANK MEECH, called as a witness by the Government, after having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. HURLEY:

Q. Will you state your name?

A. Frank Meech.

Q. You are a Special Agent for the Federal Bureau of Investigation, are you not?

A. I am.

Q. Were you such Special Agent on the 2nd day of July 1942?

A. I was.

Q. On that date, did you go to the home of Carl Eggert, 3438 North Seeley Avenue, in the City of Chicago?

A. I did.

Q. And with whom?

A. With Special Agent E. R. Fletcher.

Q. And what time did you arrive at the Eggert home?

A. At approximately 4:30 in the afternoon.

Q. And whom did you see when you arrived there?

A. Mrs. Carl Eggert.

642 Q. And did anyone else come into the Eggert home later during that day?

A. Yes; approximately 5:30 in the afternoon, Carl Eggert came in.

Q. And did yourself and Agent Fletcher have a conversation with Mr. Eggert at that time?

A. Yes; we did.

Q. And after you had this conversation, what, if anything was done?

A. After we had the conversation, Carl Eggert went to a cabinet in his dining room and withdrew a small wooden box, set this box on the dining room table, and produced $900.

Q. And if you recall, what were the denominations of the currency which constituted the $900?

A. The denominations were all in $50—eighteen $50 bills.

Q. Those, you say, were place on the dining room table?

A. Yes, sir.

Q. Who was present there when that $900 was placed on the dining room table?

A. Mrs. Carl Eggert, Mr. Carl Eggert, Special Agent E. R. Fletcher and myself.

643 Q. Did you, yourself, and Agent Fletcher leave shortly thereafter?

A. Yes; we recorded all the serial numbers of the money. Then Special Agent Fletcher and myself went to the Chicago office of the FBI.

Mr. HURLEY. Cross-examine.

Mr. WARNHOLTZ. No, cross-examination.

Mr. HURLEY. Mr. Haas.

JOSEPH WILLIAM HAAS, called as a witness by the Government, after having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. HURLEY:

Q. Will you state your name, please?

A. Joseph William Haas.

Q. Where do you live, Mr. Haas?

A. At 3827 North Hamilton Avenue.

Q. Do you know a person by the name of Herbert Haupt?

A. Yes, sir.

Q. I will show you Government's Exhibit 3 in evidence, and ask you whether or not that is a photograph of Herbert Haupt?

A. That is a photograph of Herbert Haupt.

Q. When did you first see Herbert Haupt?

644 A. In 1939.

Mr. HURLEY. Speak up so that we can hear you.

The WITNESS. In 1939, late in the year.

Q. Where did you meet him?

A. I met him in a place called the Haus Vaterland.

Q. And where was that located?

A. That is located on Western Avenue and Byron.

Q. And what was the occasion on which you met him in the Haus Vaterland?

A. There was a dance on Saturday night.

Q. And who was giving that dance, do you know?

A. The Bund.

Q. The German American Bund?

A. The German American Bund; yes, sir.

Q. And how often did you see Herbert Haupt at the German American Bund Headquarters?

A. At least once or twice a week.

Mr. WARNHOLTZ. I object to this, your Honor. He did not state when he met him at headquarters, but he stated he met him in a dance hall.

The COURT. Well, he met him in the Haus Vaterland.

Mr. HURLEY. That is right.

Q. Now, what meetings did you say were held in the Haus Vaterland?

A. They had their Bund meetings there.

645 Q. Bund meetings?

A. Yes, sir.

Q. How often did they have those meetings?

A. They had them once a week.

Mr. WARNHOLTZ. If your Honor please, I object to all of these testimony, no indicating Hans Haupt was there, or he in any way was concerned in this matter.

The COURT. I assume that is describing Herbert Haupt.

Mr. HURLEY. That is right. The same as the other evidence that has gone into heretofore.

The COURT. Overruled.

Mr. WARNHOLTZ. For the purpose of showing his enemy status, I take it?

The COURT. For the purpose of showing his intent, which goes to his character.

Mr. HURLEY. That is right.

Q. And did you on any occasion meet Herbert Haupt in this Haus Vaterland on the nights of the meetings?

A. Yes, sir.

Q. Where did you see the members in that particular building?

A. Well, in the hall where the meeting was being held.

Q. The Bund meeting?

A. Yes, sir.

646 Q. Now, calling your attention to the 24th of June 1942, did you see Herbert Haupt on that evening?

A. Yes, sir.

Q. Where did you see him on that occasion?

A. I saw him at the Wine Gardens, a night spot on North Avenue.

Q. How do you spell Wine Gardens?

A. W-i-n-e, I believe it is.

Q. Where was that located on North Avenue?

A. It is near Ogden Avenue on North Avenue.

Q. About what time on the 24th of June did you see him at that spot?

A. Ten o'clock P. M., approximately.

Mr. WARNHOLTZ. If your Honor please, I object again on the ground Hans Haupt was not present at this particular meeting at the Wine Gardens in June 1942.

The COURT. Is this 1942?

Mr. HURLEY. That is right.

The COURT. Overruled.

By Mr. HURLEY:

Q. And was there anyone with you when you first saw him at 10 o'clock P. M. June 24th at the Wine Gardens?

A. Yes; the girl I was going with at that time was with me.

647 Q. What did you do after you went into this night club?

A. Well, when I entered the night club——

Mr. BERTRAM. Again, I want to object.

The WITNESS. When I entered the night club, Herbert Haupt was standing at the bar. We exchanged waves. I proceeded to a table, and after we sat for a while there, one of the singers and Herbert Haupt joined us a few minutes later, rather, Herbert Haupt came over and joined us at our table.

By Mr. HURLEY:

Q. Did you talk to him there at that time?

A. Yes, sir.

Q. What did he say to you on that occasion?

Mr. WARNHOLTZ. Objected to as hearsay, as Mr. Haupt was not present.

The COURT. Overruled.

The WITNESS. A. Well, he told me at that time that he had been in Mexico. He had gone to South America, from there on a freighter, and they ran into a British Blockade, and they went to Japan, and he mentioned one fellow he seen in Japan, and that was Hans Heickermeyer.

By Mr. HURLEY:

Q. Did he say anything else?

648 A. He showed me a ring he had gotten from General Franko's man. He also told me he had a message from a high German military source, for a fellow called Kauffmann; I didn't get the first name; I got it, but I can't say it; Gerhard Kauffmann.

Q. What else did he say about that same subject?

A. Well——

Mr. HURLEY. I will withdraw that question.

Q. Did you know who Gerhard Kauffmann was; did you know that individual?

A. Yes, sir.

Mr. WARNHOLTZ. That is objected to, if your Honor please. It is immaterial, certainly as far as Hans Haupt is concerned.

The COURT. Overruled.

By Mr. HURLEY:

Q. What was your answer?

A. Yes. I know Gerhard Kauffmann.

Q. Now, was there anything else said further than what you have related about this message?

A. Well, he was engaged at that time, Gerhard Kauffmann, and his brother Heinrich Kauffmann was in jail and wanted for the Army, and he asked me if he could post the bail money while his trial was being held.

Q. Did he say anything further about getting in touch with Gerhard Kauffmann?

649 A. Yes, sir; he asked me if I could get him that telephone number.

Q. Telephone number of what?

A. Gerhard Kauffmann. I gave him my telephone number to call me back next day and I wasn't home and mother said, nobody called.

Q. When you gave him your phone number, what, if anything, did you do with reference to that?

A. He wrote it down in a little black book.

Q. How, you spoke of running into a British Blockade, where did he say, if he did say, he went?

A. From the way I understood it, he was going to Japan, and when that occurred, he was also claiming they were bombed by airplanes, and also they had been torpedoed on the way.

Q. Did he say anything else that had been done?

A. He mentioned they had been in Germany.

Q. Was there anything said about his travels that you recall now?

A. No, sir; I can't think of anything right now.

Q. Do you recall anything he said about how he got back here?

A. No; I asked him how he got back, and he didn't mention that.

Q. Did he say anything about where he arrived?

650 Mr. Bertram. I object to his leading the witness.

The Court. Sustained.

The Witness. He mentioned something about Florida at that time.

By Mr. Hurley:

Q. Now, do you know a person by the name of Walter Kappe?

A. No, sir.

Q. Do you know whether or not Kauffmann was related to Kappe?

A. At that time, I wouldn't know that.

Mr. Hurley. All right.

Q. Do you recall testifying in that trial before Judge Campbell in this building?

A. Yes, sir.

Q. Do you recall that at that time you were asked this question:

"Question: Do you know what relation Gerhard Kaufmann is to Walter Kappe?

"Mr. SHORT. I object to that.

"The COURT. Overruled.

"The WITNESS. Brother-in-law."

By Mr. HURLEY:

Q. Do you remember saying that on that trial?

A. I don't recall. I know that later I returned to Walter Kappe's office and the brother-in-law came——

651 Mr. WARNHOLTZ. I object to what this witness returned to later on, your Honor.

Mr. HURLEY. That may go out.

Q. I am asking you now whether or not you recall those questions asked you now and you answered.

A. That was asked me.

Q. Did you at that time state the relationship was that of brother-in-law?

A. Yes, sir, I stated that.

Q. That was true at that time; is that correct?

A. Yes, sir.

Q. That is a fact now, as far as you are concerned, right?

A. Yes, sir.

Mr. HURLEY. Cross-examine.

Cross-examination by Mr. WARNHOLTZ:

Q. Mr. Haas, when you talked to Herbert Haupt in the Wine Gardens, had he just come into the place?

A. No; he was there already when I entered.

Q. Where was he when you first came in?

A. He was standing at the bar.

Q. At the time this conversation took place, when he told you that he has to deliver a very important message from a high German Military source, we were already in war, were we not?

652 A. Yes, sir.

Q. Was he drunk or sober at the time, as far as you could observe?

A. As far as I could observe, he was sober.

Q. Did he appear to act in a boisterous manner, giving himself the air of being somebody of importance?

A. Yes, sir.

Q. He did?

A. Yes, sir.

Q. How old was Herbert Haupt at the time, if you know, about?

A. About twenty-two or twenty-three.

Mr. WARNHOLTZ. That is all. Thank you. One more question, kindly.

Q. When he told you he had this message from this military source, did he talk in a whispering voice, or did he talk in an ordinary conversational manner?

A. Well, it was more or less of a whispering voice.

Q. The entire conversation only on that point?

A. Just one or two points he sort of talked lightly, because at that time, the girl I was going with was talking to this singer that was there at the time, and there were two conversations going on at the time, and at other times only one conversation, when he was telling us about the Franko ring.

Q. The talking, it was in a whispering voice, was
653 for the purpose of better conveying it to you, and not disturb the other conversation, as far as you could observe?

Mr. FINN. I object as a conclusion on his part.

Mr. WARNHOLTZ. It is cross-examination.

The COURT. Let him answer.

By Mr. WARNHOLTZ:

Q. As far as you could observe?

A. Yes; and then I guess he didn't want to disturb——

Q. Not what you guess.

Mr. FINN. Just a minute.

Mr. WARNHOLTZ. As far as you could observe.

The COURT. Overruled. Let him finish.

The WITNESS. Well, more or less. He didn't want to disturb the other conversation.

Mr. WARNHOLTZ. That is all. Thank you.

Mr. FINN. As I said, I would like to put on several witnesses out of order, one of them wants to get back to Florida, where he lives.

The COURT. Very well.

654 WILLIAM H. MCDONALD, called as a witness for the Government, after having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. FINN:

Q. Will you state your name, please?

A. William H. McDonald.

Q. Where do you live, Mr. McDonald?

A. 10162 Longwood Drive.

Q. What is your business or occupation?

A. United States Marshal for the Northern District of Illinois.

Q. How long have you been United States Marshal for the Northern District of Illinois?

A. Pretty near ten years.

Mr. WARNHOLTZ. Just a moment, kindly. Is Mr. McDonald on the witness list as a witness?

Mr. FINN. Yes; I believe he is. Do you want to look at your list? You will find his name on there. Just make sure of it.

Mr. WARNHOLTZ. Yes. All right. All right.

By Mr. FINN:

Q. How long have you been the Marshal of this district, Mr. McDonald?

A. The end of June will be ten years.

655 Q. Now, calling your attention to on or about the 5th of August 1942, did you have a conversation with Hans Max Haupt, the defendant in this case?

A. I did.

Q. Will you pick out Hans Max Haupt in the courtroom here?

A. The gentleman in the dark suit at the other table.

Q. About what time was it that this conversation took place, do you know?

A. Oh, in the forenoon; a little while before noon.

Q. Will you tell us what was said; by the way, Hans Haupt, I think we can agree on this. Where did this conversation take place, Mr. McDonald?

A. In the cell room in the Marshall's office.

Q. Mr. Haupt was arraigned, I think we can agree, can we not, on the 21st of July 1942; is that correct?

Mr. WARNHOLTZ. That is correct.

Mr. FINN. And there was a continuance of the case before the Commission to August 5th, in the afternoon?

Mr. WARNHOLTZ. That is right.

Q. Do you know whether Mr. Haupt had been brought 656 into the Marshall's office for that continued hearing?

A. The continued hearing in the Commissioner's office.

Q. Will you tell us what was said on that occasion between yourself and Hans Haupt?

Mr. BERTRAM. Objection to it, if the court please.

The COURT. What is the objection?

Mr. BERTRAM. I don't think conversations with the defendant outside of the courtroom are permissible.

The COURT. Overruled.

By Mr. FINN:

Q. Just tell us what was said.

A. Well, when the Deputy told me that Hans Haupt wanted to see me, I went back to the cell room. I asked him what he wanted, and he said he wanted to talk to an FBI agent.

Q. Now, after you had talked to Hans Haupt, what did you do after he had said that to you?

A. I called Mr. Johnson, the agent in charge, and told him what Mr. Haupt stated.

Q. You mean the agent from what?

A. Federal Bureau of Investigation. I called the United States Attorney's office, and told them of Mr. Haupt's request.

Q. Later, did several agents come over to interview, Mr. Haupt?

657 A. Later, two agents came, Mr. Hirsch and another agent, I assume he was an agent, I didn't know. I knew Mr. Hirsch.

Mr. FINN. That is all.

Cross-examination by Mr. WARNHOLTZ:

Q. Mr. McDonald, do you know who this deputy of yours was that told you that Mr. Haupt wanted to speak to you?

A. It could either have been the lock-up keeper or the clerk at the desk, I don't recall which one it might have been.

Q. You talked to that party personally, that party that conveyed the message to you directly?

A. That is right.

Q. Can you state why you called the office of the United States attorney and not the Defense Counsel?

A. His Defense Counsel hadn't been engaged at the time, Mr. Warnholtz.

Q. On August 5, 1942?

A. This occurred a couple of hours before you came over to the office that day.

Q. Did you suggest, Mr. McDonald, he should have an attorney, before he talked to someone?

A. It is not my province to suggest——

658 Q. I am asking you, did you?

A. I don't think I did.

Mr. WARNHOLTZ. Thank you kindly. That is all. Thank you.

Mr. FINN. That is all.

Mr. WARNHOLTZ. If the court please, I should like to have a recess for about five minutes, to see what I can find out about this matter. It is entirely a surprise to me. I never heard of this. I would like to talk to Mr. Haupt, and see what it is.

The COURT. Take a short recess, ladies and gentlemen. You can step in the jury room.

(Thereupon a short recess was had, and on the coming in of court after recess, the trial of this cause was resumed as follows, that is to say:)

The COURT. Proceed.

Mr. WARNHOLTZ. At this time, if your Honor please, I move that the conversation which Mr. McDonald related had with the lock-up

man or some other person be stricken because it was not in the presence of the defendant Hans Max Haupt.

The COURT. Strike it out. The conversation Mr. McDonald had with the lock-up keeper.

Mr. WARNHOLTZ. Or some other person.

The COURT. Or the secretary.

659 Mr. FINN. But not with the defendant, not the conversation with the defendant.

The COURT. That is the way I understand it. The conversation with the defendant stands.

EARL HIRSCH, called as a witness on behalf of the Government, after having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. FINN:

Q. Will you state your name, please?

A. Earl Hirsh.

Q. You have been sworn, have you?

A. Yes, I have.

Q. What is your occupation, Mr. Hirsh?

A. At the present time?

Q. Yes.

A. I am in the manufacturing business of men's clothing, in Atlanta, Georgia.

Q. Where do you live at the present time?

A. Down in Atlanta, Georgia.

Q. Now, calling your attention to the year 1942, were you a member of the Federal Bureau of Investigation?

A. Yes, I was.

Q. How long had you been an agent for the FBI?

A. Since October 1933.

660 Q. When did you sever your connections with the Federal Bureau of Investigation?

A. January 10, 1944.

Q. Calling your attention to the morning of the 27th day of June 1942, at approximately 9 o'clock, can you tell us where you were?

A. Yes; I was parked on the corner of Fremont Street and Webster Street, here in Chicago.

Q. And with whom were you at that time?

A. At that time there were several agents in the car in which I was, and we also had several other cars in the close vicinity.

Q. Now, will you tell us what you observed on that occasion?

A. At a few minutes past nine o'clock on the morning of June 27th, we received radio information from another agent who was watching the Haupt home, that Herbert Haupt was leaving his

home, and approximately eight minutes past nine we saw Haupt turn the corner on Fremont down to Webster. At that time, he was taken in custody by myself and other agents.

Q. Was he on foot or in an automobile?

A. No; he was in a car.

Q. I will show you Government's Exhibit 3 for identification, and ask you if you can tell us who that is?

661

A. That is a photograph of Herbert Haupt.

Q. Now, then, was he taken to the Federal Bureau of Investigation?

A. Immediately.

Q. And did you remain with him during that day and for what period of time afterwards?

A. Yes; practically I was with him almost constantly from that time on until he arrived in Washington for the military trial.

Q. Did you bring him down to Washington?

A. Yes.

Q. Did you remain there during the military trial?

A. Yes.

Q. Now, when he was taken to the Federal Bureau of Investigation that morning, can you tell us whether anything was taken from him?

A. Yes; there were several things on his person that I took from him at that time.

Q. I will show you Government's Exhibit 52 for identification, being a Selective Service Registration Card, Government's Exhibit 50 for identification, a gold watch; Government's Exhibit 21 for identification, being a Social Security Card, and Government's Exhibit 19 for identification, a ring, and ask you if you have ever seen these before?

662

A. This is a ring that I took from Herbie Haupt at the time of his arrest. This is a Social Security Card that I also took and my initials are there on the back.

Q. Whose initials are they?

A. Right in the office at the time I took it from him; this is his registration card.

Q. You say, "this." Will you refer to the exhibit; is that Government's Exhibit 52?

A. That is correct; Government's Exhibit 52; I took from Herbie Haupt in the office, and put my initials and the date on the back of it. This is the watch that I took from Herbie Haupt, except the crystal is now broken.

Q. You didn't break it, did you?

A. No.

Mr. FINN. All right.

Q. Now, Mr. Hirsh, when did you get back from Washington?

A. July 22, 1942.

Q. Now, calling your attention to the time thereafter were you engaged in the investigation of this Haupt trial here in Chicago?

A. I was.

Q. Calling your attentiton to the morning of August 5, 1942, were you in the office that morning?

663

A. Yes.

Q. Were you assigned, after a telephone call from the Marshall were you assigned to cover and interview Mr. Hans Max Haupt in the Marshall's office?

A. Yes.

Q. And did you go over there alone or with someone else?

A. I went over with Special Agent P. D. Robe.

Q. Will you tell us what time was it when you arrived at the Marshall's office?

A. It was approximately fifteen minutes to twelve.

Q. Now, when you got there, just what did you do, and whom did you see?

A. Well, I went to see the Marshall, because Al Johnson, the agent in charge of the Chicago office, told me——

Mr. BERTRAM. Objection. The explanation of the witness——

By Mr. FINN:

Q. Just tell us, whom did you see?

A. I went to see the Marshall; Marshall McDonald.

Q. Then after that, what happened?

A. He told me that Hans Haupt——

Mr. WARNHOLTZ. Objected to.

Mr. FINN. Leave out the conversation.

664

The COURT. Sustained.

By Mr. FINN:

Q. What did you do?

A. Thereafter went into talk to Hans Haupt.

Q. Now, where did this conversation take place?

A. In the private room, in the Marshall's office.

Q. And who was present at the time the conversation took place?

A. Special Agent Robe.

Q. And yourself and who else?

A. Hans Haupt; the three of us.

Q. Now, will you tell us just what was said on that occasion?

Mr. BERTRAM. If the court please, I will object to the conversation had with the defendant outside of court.

Mr. FINN. Outside of what?

Mr. BERTRAM. Outside of court while he was in custody.

The COURT. Overruled.

By Mr. FINN:

Q. Will you tell us just what was said on that occasion?

A. I introduced myself to Hans Haupt, showed him the credentials I had, and told him that I understood that he wanted to see an agent of the FBI. The three of us then seated ourselves
665 and Hans Haupt said, "That he told me Wergin and his wife were responsible for his son's condition, that is, being apprehended, but he said, he was very mad at them, and wanted to testify agaist them in court."

Mr. BERTRAM. I object.

Mr. FINN. Strike that out and start over again, if we may.

The COURT. I said and he said, if you will, please.

Mr. FINN. If you will, please, tell us what he said and what you said, the best you can remember.

The WITNESS. Do you want me to start?

Mr. FINN. If you will, please.

The WITNESS. When I walked into the room, I introduced myself to Hans Haupt. Showed him the credentials. The three of us, Special Agent Robe, Hans Haupt, and myself sat down in chairs in the private room. Hans Haupt said, "That he was very mad at Otto Wergin and his wife, because he blamed the predicament of his son on them, and he wanted to testify in court against them."

Mr. FINN. Yes.

The WITNESS (continuing). He then said that on Saturday night, June 20th, that his wife Erna Haupt, himself, and Herbert Haupt went over to the Wergin home on South Wood
666 Street, and at that time in the presence of all present, Herbie Haupt told a complete story of his trip to Mexico. How he contacted the German Consul there and how he obtained passage to Japan, and in Japan they were met by the German and Japanese Consul; thereafter, they ran through the British Blockade on a boat and landed in France. Hans Haupt then said Herbie Haupt related that he was in an Intelligence School. He didn't exactly specify just what it was. He said an Intelligence School, and that he had a huge sum of money to use in connection with that over here.

Hans Haupt then said Otto Wergin said "he wasn't a dummy, and that he knew the mission Herbie Haupt was on." He also said "he served in a similar capacity during the last World War."

Mr. FINN. He said this to you?

The WITNESS. That is, Wergin served in a similar capacity in the last World War in Egypt——

Q. Are you relating what Hans Haupt told you Wergin said on that occasion?

A. Exactly.

Mr. FINN. Go ahead.

The WITNESS. Hans Haupt then said that Wergin offered his services to Herbie Haupt in his activities in this country,
667 because he could use some of the money Herbie Haupt had.

Q. Now, was there any further conversation at that time?

A. Yes. Hans Haupt then related on Friday night, June 19th, he and his wife went over to the Froehling home and while at the Froehling home, Herbie Haupt related the story in the presence of the Froehlings and the Haupts about his trip to Mexico and Japan and the running of the British Blockade to France, and his being enlisted in some type of German Government, and the Intelligence School, and his return to the United States on a German submarine.

Q. Now, do you recall any further conversation?

A. Yes. Hans Haupt further said that on Sunday night, June 21, the Wergins and the Haupts went over to the Froehling home, again, they only stayed a short while, but during the stay in the Froehling home, Herbie Haupt again discussed his activities, that is, his trip to Japan and Germany, the Intelligence School, then back to the United States on a German submarine. However, they became a little afraid that the visitors, the people in the building, might overhear them, and that the Wergins and the Haupts left the Froehling home and went over to the Haupt home, and
668 again Herbie Haupt discussed his story and his Intelligence School attendance with them, and Hans Haupt said that it was for this reason, that is because the Wergins—Otto Wergin and his wife were so insistent on Herbie going forward with these plans, he wanted to testify against him in court.

Q. Was there anything further stated on that conversation, as you recall?

A. Yes. Hans Haupt related that on Saturday night, June 27th, in his home on Fremont Street, that the Froehlings and Wergins and themselves, that is, Erna and Hans Haupt, were in their residence, and because Herbie had not shown up all day, they became rather fearful something had happened to him, and at that time they all discussed on that date in the event something had happened, they decided if anything had happened to Herbie, or if they were questioned, they would all tell the same story, that they knew nothing about his activities, except the fact he had gone to Mexico.

Q. Now, have you related the substance of all of the conversations that took place that day?

A. Yes.

Mr. FINN. You may cross-examine.

Cross-examination by Mr. WARNHOLTZ:

Q. You say, Mr. Hirsh, that this conversation took
669 place at the beginning of the——

Mr. FINN. Excuse me just a minute.

Q. Do you see Hans Haupt in the courtroom here?

A. Yes.

Q. Will you point him out, please?

A. There he is over there.

Mr. FINN. Indicating the defendant Hans Max Haupt.

By Mr. WARNHOLTZ:

Q. You said this took place at about a quarter to twelve August 5, 1942?

A. Approximately a quarter of twelve, that is right.

Q. Do you know whether or not Hans Haupt had been already before the United States Commissioner Walker by that time?

A. It was my understanding he had been arraigned July 21st, 1942.

Q. And was he arraigned again on that day, do you know, on August 5th?

A. I understood he was to be arraigned at 2 o'clock on that afternoon.

Q. At 2 o'clock in the afternoon?

A. That is right.

Q. Do you know whether or not he had retained counsel by the time you talked to him?

A. That was not my business, Mr. Warnholtz.

670 Q. I am asking you, did you ask him if he retained counsel?

A. My recollection is that Hans Haupt said he did not want counsel, because he wanted to testify.

Q. Are you a lawyer, Mr. Hirsh; had you ever studied law?

A. Yes.

Q. The other gentleman who was present with you, what is his name?

A. Robe.

Q. Has he ever studied law?

A. You will have to ask him.

Q. You do not know?

A. No.

Q. When you spoke about Hans relating this, did he volunteer all of that, or did you ask him?

A. When we first started off, he volunteered.

Q. And later on, he didn't relate it, but answered your questions, right?

A. That is right.

Q. Did you ask him?
A. I asked him questions.
Q. Did you have any stenographer present?
A. Yes.
Q. You took down this conversation?
A. No. I took my own notes.
Q. Mr. Robe also took notes?
671 A. That I can't tell you. I took notes for myself.
Q. Who gave you the message at the Bankers Building, the headquarters, for you to go to the Marshal's Office?
A. A. H. Johnson.
Q. That was the Special Agent in charge, is that right?
A. At that time that is correct.
Q. You returned from Washington July 22, 1942?
A. That is right.
Q. By that time, had the military trial been had already in Washington?
A. It was in progress and almost over.
Q. When you talked to Hans Haupt, did you at that time believe you were talking to a sane or insane person?
A. You want my opinion?
Q. Yes.
A. I would say that Hans Haupt was upset.
Q. Had you at that time heard he tried to commit suicide prior to that date?
A. No; I had just returned from Washington.
Q. Mr. Hirsh, when you arrested Herbert Haupt on the morning of June 27th, was he alone in his car?
A. Yes; he was.
672 Q. You had also followed him the day preceding, had you not, on Friday, June 26th?
A. I, personally, didn't.
Mr. WARNHOLTZ. Thank you, kindly.
Mr. FINN. Pardon me, one more question.

Redirect examination by Mr. FINN:

Q. Did you make a memoranda immediately after the conversation, of the conversation that took place?
A. With Hans Haupt?
Q. Yes.
A. At the time I was talking to him I took notes.
Mr. BERTRAM. I object, if the court please. That serves no purpose.
Mr. FINN. All right. That is all.
Mr. WARNHOLTZ. That is all. Thank you.
Mr. BERTRAM. If the court please, I want to make a motion

to exclude all of the testimony of the last witness regarding statements of the defendant Hans Max Haupt.

The COURT. On what theory?

Mr. BERTRAM. As being made, not in open court, as required by the constitution.

The COURT. What?

Mr. BERTRAM. As not being made in open court as
673 required by the constitution.

The COURT. Motion denied. When was the arraignment in this case.

Mr. FINN. The original arraignment was July 21st, he was charged at that time, and pleaded not guilty, and the case was continued over until August 5.

The COURT. And this conversation?

Mr. FINN. August 5th.

The COURT. Motion denied.

PENNEL V. ROBE, called as a witness on behalf of the Government, after having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. FINN:

Q. Will you state your name, please?

A. Pennel V. Robe.

Q. What is your occupation, Mr. Robe?

A. I am a Special Agent of the Federal Bureau of Investigation.

Q. How long have you been a Special Agent of the Federal Bureau of Investigation?

A. Since September, 1940.

Q. Calling your attention to August of 1942, were
674 you assigned to the Chicago office at that time?

A. Yes, sir; I was.

Q. And in the course of your duties, were you assigned to a portion of the investigation in the Haupt case?

A. Yes, sir; I was.

Q. Now, calling your attention specifically to the morning of August 5, 1942, did you go anywhere with Agent Hirsh at that time?

A. Yes, sir; I did.

Q. Where did you go?

A. I went to the office of the United States Marshal in Chicago.

Q. Who gave you orders to go with Mr. Hirsch?

A. The Special Agent in charge of the Federal Bureau of Investigation.

Q. What was his name?

A. A. H. Johnson.

Q. Now, will you tell us where you went when you first got there?

A. We went immediately to the office of Mr. McDonald, the United States Marshal.

Q. And thereafter, did you interview, or were you present at an interview with Mr. Hans Haupt at the time in this case?

A. Yes, sir; I was.

Q. Can you point out Mr. Haupt in the courtroom?

675 A. Yes, sir. He is the gentleman there at the end, in the dark suit.

Mr. FINN. Indicating the defendant Hans Max Haupt.

Q. Now, where did this interview take place?

A. In the private room of the United States Marshal's office.

Q. And who was present at the time?

A. Former Special Agent, Earl Hirsh.

Q. And who else?

A. And myself and Mr. Haupt.

Q. All right. Will you tell us just what was said by the various parties on that occasion?

Mr. BERTRAM. If the court please, I want to make the same objection on the same grounds as made to the previous testimony of the Witness Hirsh.

The COURT. Overruled.

Mr. FINN:

Q. Will you tell us what was said on that occasion, Mr. Robe?

A. Mr. Haupt said he wished to talk about Mr. and Mrs. Wergin, that they were just as involved in this case as he was. He stated that on June 20, 1942, Mr. Haupt, Herbert Haupt and Erna Haupt, visited at the Wergin home on South Wood Street. At that time Herbert Haupt went over the entire story concerning his trip to Japan, then to Germany. He also told of his return

676 to this country by submarine. Mr. Haupt said that Herbert Haupt left the impression that he had attended an Intelligence School in Germany. Mr. Wergin then replied——

Q. Are you saying what Mr. Haupt told you?

A. Mr. Haupt told us. Mr. Haupt then said Wergin told Herbert that he had served in a similar capacity in the First World War, so that he was no dummy, and that if Herbert needed help, he should call on him. Mr. Haupt said that Herbert also mentioned having a large sum of money—the amount was not specified.

Herbert Haupt said that his duties in this country was that of a contact man. Mr. Haupt then said that he blamed Mr. and Mrs. Wergin for the predicament that he was in, and he blamed this on the fact of the influence that Mr. Wergin exerted over Herbert at that meeting on Saturday, June 20th.

He said that Herbert also related the same story in the Froehling home on June 19th.

Q. What did he say with reference to that meeting?

A. He said that Herbert told a complete story of his trip to Germany and return by submarine at the Froehling home at dinner time, and that Mr. and Mrs. Froehling also knew of Herbert's trip.

Q. Now, was there anything further said, anything else said on that occasion?

677 A. Mr. Haupt said that on June 27th Mr. and Mrs. Wergin were again in the Haupt home, at 2234 North Fremont Street and at that time Mr. and Mrs. Froehling, Mr. and Mrs. Haupt, Mr. and Mrs. Wergin, all decided if anybody made any inquiry as to why Herbert was in this country, that their answer, all their answers would be, that they did not know.

Q. Anything further that you recollect?

A. Not that I can recall.

Mr. FINN. You may cross-examine.

Mr. BERTRAM. I wish to make a motion to exclude all the testimony of this witness on the grounds heretofore stated, your Honor.

The COURT. Denied.

678 Cross-examination by Mr. WARNHOLTZ:

Q. Mr. Robe, have you ever studied law?

A. Yes, sir.

Q. Are you admitted to the bar in any state?

A. In this State?

Q. Any state?

A. Yes, sir.

Q. Before you went over to the marshall's office, with whom did you talk in your office, in the FBI headquarters—who told you to go there?

A. I talked with Special Agent Hirsch.

Q. What did he tell you?

A. He told me that I was to accompany him to the United States Marshall's office.

Q. When you talked to Hans Haupt in the marshall's office, did you suggest to Mr. Haupt he should consult an attorney of his own before he talked?

A. No, sir. He asked us——

Q. I am asking you did you suggest that; yes or no?

A. No, sir.

Q. He did not have an attorney with him at the time, did he?

A. No, sir.

Q. Do you know whether or not Mr. Hirsch ever

679 studied law?

A. No, sir.

Q. Do you know whether or not Hans Haupt had an attorney up to that time?

A. No, sir; I do not.

Q. Mr. Robe, you stated that Hans told you at that time in the marshal's office that he wished to talk to you; then he started off talking. Is that right?

A. When we first went into the room we asked him what he wished to talk about.

Q. Then he started to tell you a story?

A. Yes, sir.

Q. Did you ask him from date to date? Did you suggest dates to him? Did he tell you the story?

A. He told us the story.

Q. He gave you dates as you gave them just now?

A. Yes, sir.

Q. It was a story that he told and it was not a matter of him replying to your questions, was it? Was it one of the two?

A. He was asked questions; certainly.

Q. So you did ask him questions?

A. Mr. Hirsch asked him questions; yes.

Q. You did not?

A. No.

680 Q. Concerning that meeting at the Haupt home on Sunday—on Saturday night, June 27—did Mr. Haupt tell you that evening that the Wergins, Mr. and Mrs. Froehling and their two children were in his home, celebrating Mrs. Haupt's birthday?

A. No, sir.

Q. Did he tell you why the children were over there?

A. No, sir.

Q. You did not testify concerning any of these facts at the trial that was had in this courthouse about a year and a half ago, did you, Mr. Robe?

A. No, sir; I did not.

Q. To the best of your knowledge, Mr. Hirsch did not, either?

A. No, sir.

Mr. WARNHOLTZ. That is all. Thank you.

Redirect examination by Mr. FINN:

Q. Were you asked anything about it at that time or not?

A. No, sir.

Mr. FINN. That is all.

(Witness excused.)

Mr. FINN. May we have just a moment?

681 Your Honor, there is a matter we would like to take up with counsel in chambers with a view to the testimony—

The COURT. Right now?

Mr. FINN. If you please?

(And thereupon the following proceedings were had in chambers, outside of the presence and hearing of the jury:)

Mr. WOLL. If the Court please, Herbert Haupt was arrested on the morning of the 27th of June. That evening there was at the Haupt home Mr. and Mrs. Wergin, and I believe also their two children, Mr. and Mrs. Wergin, Mr. and Mrs. Froehling and their two children, and Hans and Erna Haupt.

That is the evening, later on, that is the evening when that particular search was made that we had on hearing before trial of the case.

We propose to prove no part—we propose to prove by a witness—and we will also have testimony to further things, that on the evening of June 27th that he went to the Haupt home, that at the Haupt home he saw Mr. and Mrs. Wergin, Mrs. Froehling, at least, and Hans Haupt and Erna Haupt.

682 That is the instance that we are going into. As to what transpired nothing will be said about the search.

The COURT. You are going to do what?

Mr. WOLL. Going to prove by this witness.

The COURT. Whom?

Mr. WOLL. This witness, Handley, who is now taking the stand.

The COURT. Yes?

Mr. WOLL. That he went to the Haupt home on the night of June 27th; that in that home were Mr. and Mrs. Wergin, Mrs. Froehling, Hans and Erna Haupt and I think the Froehling children.

Nothing is going to be testified as to what happened in the house, just the mere fact that they were in the house when he got there. We are not going into this search and won't ask any questions about what they did there at all, or any conversation that took place, just the bare fact that these people were in the house that night.

The COURT. How did Handley go there on the evening, what for?

Mr. WOLL. Herbert had been arrested that morning.

The COURT. Handley went there, why? For whom did Handley go there?

Mr. WOLL. Along with other FBI agents.

683 The COURT. With whom?

Mr. FINN. Shaeffer and Kriofsky, the three of them testified on Monday. They were mentioned on Monday. They were the ones that made the search.

Mr. BERTRAM. On the motion to suppress.

The COURT. This is one of the men who went there?

Mr. BERTRAM. Shaeffer, Handley and Kriofsky.

The COURT. Did you say Handley testified here?

Mr. BERTRAM. Yes, sir; he was the last one who testified.

The COURT. No.

Mr. WOLL. I might point out what they had in the petition which your Honor granted and the order which was entered on it was to exclude such evidence as the finding of money in the home, the finding of clothes——

The COURT. They went there, as far as the evidence shows, to make a search. Anything that they saw there—they were there illegally and they may not testify to it. Anything they saw. If there is an objection to it I will sustain it.

Mr. BERTRAM. Yes.

The COURT. Objection sustained.

Mr. WOLL. I believe we will have some other testimony from this witness, but not along that line, but not on that subject.

684 The COURT. Would it be better to let the jury——

Mr. WOLL. Have a recess?

The COURT. Recess now, or later?

Mr. WOLL. It makes no difference to me.

Mr. BERTRAM. We have no objection.

(And thereupon the following proceedings were had in open court in the presence of the jury.)

The COURT. You may take a short recess, ladies and gentlemen.

(And thereupon a short recess was taken.)

JAMES L. HANDLEY, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. FINN:

Q. Will you state your name, please?

A. James L. Handley.

Q. What is your occupation, Mr. Handley?

A. I am a Special Agent of the Federal Bureau of Investigation.

Q. To what office are you assigned at the present time?

A. New York.

685 Q. Calling your attention to June of 1942, were you assigned to the Chicago office at that time?

A. Yes, sir.

Q. In the course of your business as such special agent, did you participate in the surveillance over the activities of Herbert Haupt?

A. I did.

Q. I show you Government's Exhibit 3 for identification, and ask you if you can tell us who that is?

A. That is Herbert Haupt.

Q. Calling your attention to Monday, the 22nd day of June, 1942, were you in the vicinity of 2234 North Fremont, Chicago, Illinois?

A. Yes, sir.

Q. What time did you arrive at that place?

A. Approximately 10:30 A. M.

Q. Did you go by automobile or on foot?

A. By automobile.

Q. And who was with you at that time?

A. Special Agent Dixon.

Q. Just where did you go in the car?

A. We left the office and went to 2234 North Fremont Avenue.

Q. And will you tell us just where you took up your position?

686 A. We took our position on the east side of Fremont Street, south of Webster.

Q. And from that position could you see the front of 2234 North Fremont Street?

A. Yes, sir.

Q. You were out in that vicinity on numerous occasions thereafter, were you not?

A. Yes, sir.

Q. On several occasions?

A. Yes, sir.

The COURT. What date was this?

A. June 22, 1942.

Mr. FINN. Will you mark these "Government's Exhibits 60, 61, and 62" for identification?

(The documents produced by counsel were marked for identification "Government's Exhibits 60, 61, and 62.")

Q. Showing you Government's Exhibits 60, 61, and 62, for identification, can you tell us what those photographs show?

A. The first one is the Haupt residence at 2234 North Fremont Street.

Q. Where was that taken from?

A. Across the street.

Q. You are speaking of Government's Exhibit 60 for identification, is that correct?

687 A. Right. Government's Exhibit 61 is another picture of 2234 North Fremont Street.

Q. From what angle is that taken?

A. From the north side, Exhibit 62 is a picture of the front steps, the front entrance to 2234 North Fremont.

Q. Calling your attention to approximately 12:25 P. M. on June 22, 1942 will you tell us what, if anything you observed at that time?

A. A yellow taxicab went north on Fremont Street and stopped in front of 2234 North Fremont.

Q. Go ahead.

A. A young man alighted from this cab and went into the house.

Q. Can you tell us how he was dressed on that occasion?

A. He was dressed in a tan suit.

Q. Which door did he go into?

A. Into 2234.

Q. Was it the front or the rear or what?

A. He went in the gate and up the front steps. I could not see him after that.

Q. At that time, or approximately at 1:45 P. M., what if anything did you observe?

688 A. Herbert Haupt alighted—or came out of 2234 North Fremont.

Q. Where did he come?

A. He came off the porch and down the steps.

Q. Will you tell us what he did then?

A. He stayed in front of this address approximately two or three minutes.

Q. Then what did he do?

A. Then he started to walk north, walked about ten yards, turned around and walked south to Webster Avenue.

Q. At that time when he—at any time when he was walking back and forth did you get close enough to him to get a good look at him?

A. Yes, sir.

Q. Who was that person?

A. It was Herbie Haupt.

Q. Did you later on that day get even closer to him?

A. Yes, sir.

Q. How close did you get to him?

A. Approximately ten feet away.

Q. Was this person that you saw come out or come off the porch and whom you have described as seeing ten feet away, the same person you saw go into the place or up the steps in the beginning?

A. From appearances; yes.

689 Q. Now you followed him around that afternoon, did you?

A. Yes, sir.

Q. Calling your attention to approximately 5:15 in the afternoon of June 22, 1942, what if anything did you observe at that time?

A. Herbert Haupt went into the address at 2234 North Fremont.

Q. What time were you relieved that evening?

A. Approximately 5:45.

Q. And who relieved you, if you recollect?

A. Robe, Special Agent Robe and Axtell and Lynch and Kriofsky.

Q. Now calling your attention to June 27th, 1942, at approximately nine o'clock in the morning were you in the vicinity of 2234 North Fremont Street?

A. Yes, sir.

Q. And with whom were you there at that time?

A. Special Agent Glen Field.

Q. Will you tell us what you observed on that occasion?

A. At approximately 9:05 Herbert Haupt came out of 234 North Fremont Avenue, came down the steps, out the gate and got into his automobile that was parked in front of the house.

690 Q. Now, did you follow him?

A. Yes, sir.

Q. Was he apprehended shortly thereafter?

A. Yes, sir.

Q. Where did this car go? Just tell us where he went?

A. He drove his car south on Fremont Street to Webster, turned west on Webster and was apprehended at the "L" station.

Q. How far is that from Fremont Street, approximately?

A. Approximately 200 yards.

Q. When you said you saw him come down the steps, what did you mean by that?

A. He walked down the stairs.

Q. Showing you Government's Exhibit 62 for identification; are those the steps that you are talking about?

A. Yes, sir.

Q. Those are the front steps of the residence, is that right?

A. Yes, sir.

Mr. FINN. That is all with this witness.

Mr. WARNHOLTZ. Thank you. No cross-examination.

(No cross-examination. Witness excused.)

691 EDWARD C. DIXON, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. FINN:

Q. Will you state your name, please?

A. Edward C. Dixon.

Q. What is your address?

A. 2819 Maple Avenue, Evanston, Illinois.

Q. What is your business or occupation?

A. I am connected with the Chicago Crime Commission.

Q. In June, 1942, were you a special agent of the Federal Bureau of Investigation?

A. I was.

Q. As such special agent were you assigned to investigate a portion of the Haupt case?

A. I was.

Q. Were you also assigned, as a part of your duties, to a portion of surveillance kept over the activities of Herbert Haupt?

A. That is correct.

Q. Calling your attention to Monday, June 22, 1942, at about 10:00 o'clock in the morning, did you go to the vicinity
692 of 2234 North Fremont Street, Chicago, Illinois?

A. I did.

Q. Did any one accompany you at that time?

A. Yes.

Q. Who came with you at that time?

A. Special Agent Handley.

Q. Now, did you take up a position near that residence at 2234 North Fremont Street?

A. That is correct.

Q. Calling your attention to approximately 12:25 P. M., which would be shortly after noon on that day, did you observe anything?

A. I observed a Yellow taxicab drive up in front of 2234 North Fremont Avenue and a young man got out of the taxicab.

Q. Did you notice where this young man went?

A. After a little while, standing by the taxicab, he went into 2234 North Fremont Avenue.

Q. Where did he go, what entrance did he go into?

A. The front entrance.

Q. Now, did you remain there on duty?

A. I did.

Q. Calling your attention to approximately 1:45 P. M. did you make any observation at that time?

A. Yes; I did.

693 Q. Between the time this young man entered the residence and 1:45, did you observe any other activities at that time; or just sit there? Did you watch the house at all times?

A. Yes; watched the house.

Q. Now at 1:45 P. M. what happened?

A. I observed the same young man come out of 2234 North Fremont.

Q. What did he do at that time?

A. He came out, walked out on to the street and stood in front of the residence for a short period of time, then walked south on the west side of Fremont Avenue to Webster Avenue.

Q. Did you follow that young man during that day?
A. Yes, sir.
Q. And did you get close enough to recognize him?
A. I did.
Q. I show you Government's Exhibit 3 for identification and ask you if you can tell us if that is the young man you saw on that occasion?
A. That is the young man.
Q. Now, calling your attention to approximately 5:15 of that same afternoon, what if anything did you observe at that time?
694 A. At that time I observed the same young man reenter 2234 North Fremont.
Q. Had you followed him around during the afternoon?
A. Yes, sir.
Q. Did you see him go into the house?
A. Yes.
Q. What entrance did he go into?
A. The front entrance.
Q. I show you Government's Exhibits 60, 61 and 62 for identification and ask you if you can tell us what those are? Let us get them in sequence. 60 I think is the first one. Take Government's Exhibit 60 first.
A. Government's Exhibit 60 is the photograph of the residence of 2234 North Fremont Avenue.
Q. Where is that taken from?
A. The residence on the west side of the street. It must have been taken from the east side.
Q. That is looking directly at the residence from across the street?
A. Correct.
Q. Showing you Government's Exhibit 61 for identification, I ask you if you can tell us what that is?
A. That is 2234 North Fremont?
695 Q. Where is that taken from, what angle taken from?
A. Across the street, and slightly north of the residence.
Q. And Government's Exhibit 62 is what?
A. Government's Exhibit 62 shows the door, or similar to the door way at 2234 North Fremont.
Q. What time were you relieved on that afternoon, Mr. Dixon?
A. Shortly after six-o'clock.
Q. Do you recollect who relieved you? Were you relieved by other agents?
Yes, by other agents; yes, I believe it was agents Kriofsky and Robe, and Axtell, and I believe Lynch.

Q. Now, calling your attention to Tuesday, June 23, 1942, were you again in the vicinity of 2234 North Fremont Street?

A. I was.

Q. At approximately 12:20 P. M.—That is about twenty minuest past noon on that afternoon, can you tell us what, if anything you observed?

A. At that time I observed the same young man, the same young individual, the same young man and a woman come out of 2234 North Fremont Avenue.

Q. And what did he do that day?

696 A. They came out to the sidewalk, went south, walking south on the west side of Fremont Avenue. They went to Webster Avenue.

Q. Did you follow them?

A. Yes.

Q. Where did they go?

A. They turned west on Webster Avenue and proceeded to the "L" station.

Q. Then what happened?

A. And they were walking on the north side of the street, they crossed to the south side of the street in front of the ticket office, and there the young man kissed the woman good-bye and he in turn again crossed back to the north side of the street and proceeded west.

Q. Did you later see this same lady during the course of the week?

A. Yes.

Q. And did you later learn who this lady was?

A. I was advised. I did not meet her.

Q. Well, how were you advised?

A. Mrs. Haupt.

Mr. WARNHOLTZ. That is objected to.

Mr. FINN. That question may be stricken.

697 The COURT. Are you objecting?

Mr. FINN. Mr. Warnholtz, I will withdraw the question and the answer may be stricken.

The COURT. Sustained.

Mr. FINN. May these be marked for identification?

(Photographs produced by counsel marked for identification Government's Exhibits 63 and 64.)

Q. I show you what has been marked for identification Government's Exhibits 63 and 64 and ask you whether or not you can tell us if this is or is not the woman you saw on that occasion, or on a later occasion, did you see her?

A. I cannot positively identify the pictures.

Q. Now, on the same afternoon, June 23, 1942, at approximately 5:15 p. m., were you in the vicinity of 2234 North Fremont Street at that time?

A. I was.

Q. And who was with you on that occasion, if you remember?

A. I believe Special Agent Lynch.

Q. Will you tell us what you observed at that time?

A. I observed this young man reenter 2234 North Fremont.

Q. Now, did you continue on duty for a while?

698 A. Yes.

Q. Calling your attention to approximately 6:00 p. m., tell us what if anything you observed at that time?

A. At that time I observed the young man, the same lady that came out at 12:20 p. m. earlier in the afternoon, and another man, an elderly man, middle aged, or elderly man come out of the house.

Q. Where did they come from?

A. From the front entrance.

Q. Will you tell us what they did?

A. They entered the automobile and drove south on Fremont Avenue.

Q. And did you continue to follow them?

A. That is correct.

Q. Where did they go?

A. They drove to Webster, turned east on Webster, over to Halsted, north on Halsted to a restaurant on the corner of three streets, which would be the corner of Fullerton, Halsted, and Lincoln.

Q. Now, were you outside the restaurant?

A. Yes.

Q. Did you wait outside the restaurant?

A. Yes.

Q. Did you keep fairly close to them at that time?

A. Within five cars lengths.

699 Q. All right, just tell us what they then did, what you saw them then do? How long did they remain in the restaurant?

A. They were in the restaurant until approximately 6:45 P.M.

Q. Then what did you see them do?

A. They came out of the restaurant and the three of them shook hands. Then the young man and the elderly man entered the automobile they had driven over there, drove north.

Q. Did you continue to follow them?

A. That is correct.

Q. Where did they go?

A. They went to the corner of North—northwest corner of

Sheffield and Diversey, I believe it was, the Warner Motor Sales.

Q. What did they do at the Warner Motor Sales?

A. The two men parked their automobile and went inside the Motor Sales rooms.

Q. Now, who was with you at that time, if you recollect?

A. Special Agent Lynch.

Q. All right now, what did you do?

A. Got out of the automobile and walked around the corner and observed the show room.

709 Q. Did you see anyone in the show room?

A. I did.

Q. Who did you see there?

A. The young man with the elderly man that was driving with him, and a third person.

Q. Do you see the elderly man in the courtroom, the one that you refer to as the elderly man in the courtroom?

A. I do.

Q. Will you point him out to us, if you will please?

A. Right there.

Mr. FINN. Indicating the defendant Hans Max Haupt.

Q. Now, how long did they stay in the Warner Motor Sales?

A. They came out of the Warner Motor Sales approximately 7:35, I believe, between 7:30 and 7:35.

Q. What did they do when they came out?

A. They reentered their automobile, drove back to 2234 North Fremont Avenue.

Q. And what did you see them do there?

A. The two men got out of the car and stood on the sidewalk for a short period of time.

Q. Yes.

701 A. And Max Haupt entered 2234, the residence, and the young man went south on Fremont Avenue.

Q. Did you continue to follow him?

A. I did.

Q. Just tell us what he did.

A. He went south on Webster Avenue, just turned east, went over to Larrabee, Lincoln and Webster there and stayed until approximately twenty minutes after eight.

Q. Did you continue following him and watching him?

A. That is correct.

Q. What did he do then?

A. He crossed to the west side of the intersection and there was a street car there, rode a short distance beyond, approximately a block beyond Halsted Avenue. Then he alighted, a short distance from the corner and met Hans Haupt.

Q. What did you see them do?

A. They retraced—that is, they went back east to the corner of Halsted and entered a tavern.

Q. How long did they stay in there?

A. There, a short period of time; approximately five minutes, approximately.

Q. Then what did they do?

702 A. They came out and went back to Fremont Avenue, up to 2234 North Fremont, where they entered the premises.

Q. When you say "they" did you mean both?

A. The young man and Max Haupt.

Q. At what time did they reenter 2234 North Fremont Street, approximately?

A. Approximately ten minutes to nine I believe.

Q. Did you continue to watch outside, watch outside the building?

A. I did.

Q. Calling your attention to about 10:15 p. m., what if anything did you observe at that time?

A. At that time I observed the same young man and a young woman come out of 2234 North Fremont Street.

Q. When you say the same young man, do you mean Herbert Haupt?

A. That is correct.

Q. When did they come out of the door or where did they come out of the door? What door did they come out of?

A. The front entrance.

Q. And what did Herbert Haupt and the young woman do?

703 A. Entered the automobile that had previously been driven, that he had previously been driving and drove away.

Q. Did you continue to follow them?

A. That is correct.

Q. Where did they go?

A. They went south on Fremont to Webster, turned west, went over to the Tenycks Tavern located on Ashland Avenue.

Q. How long did they stay there? Were you relieved at about that time?

A. Yes; they were there approximately ten minutes or so, that I know.

Q. Were you still on duty at approximately 12:15 a. m.?

A. I was.

Q. In the vicinity of 2234 North Fremont Street?

A. I was.

Q. What if anything did you observe at that time?

A. I observed Herbert Haupt return to 2234 and enter.

Q. This young man that you are speaking about on all occasions is the same young man as is shown in Government's Exhibit 3 for identification?

A. That is correct.

Mr. FINN. You may cross-examine.

704 Mr. WARNHOLTZ. No cross-examination.

(No cross-examination. Witness excused.)

RICHARD W. AXTELL, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. FINN:

Q. Will you please state your name?

A. Richard W. Axtell.

Q. What is your business or occupation, Mr. Axtell?

A. I am a special agent of the Federal Bureau of Investigation.

Q. How long have you had that occupation?

A. Since May 27, 1940.

Q. Were you assigned to the Chicago office in June of 1942?

A. Yes; I was.

Q. As a special agent, did you participate in a portion of a surveillance over the activities of Herbert Haupt?

A. Yes; I did.

Q. Calling your attention to Monday, June 22, 1942, can

705 you tell us what time on that day you—you went on duty?

A. Yes, I went on duty at approximately 5:45 P. M.

Q. Did you go out to the vicinity of 2234 North Fremont Street?

A. I did.

Q. Who was with you on that occasion?

A. Special Agent John A. Lynch.

Q. Did you go out on foot or on automobile?

A. We went out in an automobile.

Q. When you got out there, then, did you take up a position where you could see 2234 North Fremont Street?

A. Yes, sir; we did.

Q. I will show you Government's Exhibit 60, 61, and 62 for identification and ask you if those correctly portray that building, 2234 North Fremont Street?

A. Yes, sir; they do.

Q. Now calling your attention to about 7:30 P. M. on the date of June 22, 1942—that was on a Monday, was it not?

A. That is correct.

Q. At about 7:30, will you tell us what, if anything, you observed?

A. At about 7:30 that night I saw Hans Haupt and
706 Erna Haupt and Herbert Haupt go out of the front door of the Hans Haupt house at 2234 North Fremont.

I saw them walk out on the porch, down the steps, and they got into a Plymouth car sedan which was parked in front of the residence of 2234 North Fremont.

Q. Did you follow them?

A. Yes; I did?

Q. When they first got into the car who was driving?

A. Herbert Haupt got into the driver's position in the car and drove the car away from 2234.

Q. Did you follow them?

A. Yes.

Q. Just tell us where they went.

A. Well, they drove around the block and then the car stopped.

Q. What do you mean by "around the block"?

A. I mean they drove the car south on Fremont to Webster, then east on—or west on Webster, for another block; then they turned north to the next street for one block arriving at Belden Avenue and on that intersection the car stopped.

Q. Will you tell us what took place when the car stopped?

A. I saw Herbert Haupt get out from the driver's posi-
707 tion of the car and at the same time Hans Haupt got out of the right side of the car and the two of them changed positions with each—Hans Haupt then taking the driver's seat.

Q. Who was in the middle?

A. Erna Haupt was in the middle.

Q. Did you follow them?

A. Yes; I did.

Q. Will you tell us where they went?

A. They proceeded on to Elston Avenue, and then they went in a northwesterly direction, and they came to 6361 North Leoti Avenue where the car stopped.

Q. Did you ascertain whose residence that was?

A. Well, that was the residence of Andreas Conrad Grunau.

Q. Will you tell us what, if anything, you observed when the car stopped there?

A. As the car pulled up, and as the car stopped the three persons—that is Hans Haupt, Erna Haupt, and Herbert Haupt—got out of the car and walked up the front sidewalk to the Grunau residence.

Shortly thereafter two women appeared from the side of the house and the five people, Hans Haupt, Erna Haupt, Herbert Haupt and these two women were standing in front of the house for about ten minutes. Then the five went into the Grunau residence.

Q. About what time was that approximately?

A. They arrived there about 8:00 P. M. This made it about eight or ten—about 8:15 when they went into the house.

Q. Did you remain there?

A. I did.

Q. All right. How long were they in the Grunau residence there?

A. Until approximately 9:30 P. M.

Q. And then what, if anything did you observe?

A. Then I observed Hans Haupt, Herbert Haupt, and Erna Haupt coming out of the Grunau residence and they again got into the Plymouth car that they had parked in front of that house.

Q. What did they do then?

A. With Hans Haupt who was then driving the car—then we followed the car as it drove off from that address, and we followed it and saw them stop in front of 7236 North Odell.

Q. Did you later ascertain whose residence that was?

A. Yes, I did. That is the resident of Hienrich Koch.

Q. What happened there?

A. As the car stopped the three individuals, that is Hans Haupt, Erna Haupt and Herbert Haupt got out of the car and went up to the front porch of the Koch residence. They rang the bell and shortly thereafter were admitted to the residence. I saw them go in.

Q. How long did they stay there?

A. They arrived there at about 10:00 P. M., and they stayed until about 10:30, approximately 10:30 that evening.

Q. Then what happened?

A. Well, at 10:30 the porch light went on, on the front porch of the house. I saw the three of them, that is Hans Haupt, Erna Haupt and Herbert Haupt came again, came out from the Koch residence, standing on the front porch a few minutes talking. Then they walked down the stairs, got into the Plymouth that was parked in the street.

Q. Where did they go?

A. They drove off. I followed them to 2234 North Fremont Street.

Q. Tell us what happened there.

A. The car pulled up in front of 2234 North Fremont Street and the door opened and Erna Haupt and Herbert Haupt got out of the car and walked up to the front of the residence, up the front steps, 2234 and into the front door.

Q. What happened to Hans? What did he do?

A. Well, Hans Haupt driving the Plymouth then proceeded on south on Fremont Street. I lost sight of him.

Q. Now, calling your attention to the 25th day of June——

Mr. FINN. Strike that, please.

Calling your attention to the 25th day of June, 1942, at approximately 12:00 P. M. were you in the vicinity of 2234 North Fremont Street on that occasion?

A. Yes; I was.

Q. Did you follow Herbert Haupt from some other place?

A. Yes; I did.

Q. Is that correct?

A. Yes, sir; I did.

Q. What did you see him do at that time, about 12:00 P. M.?

A. I saw him drive his—drive the Pontiac car up in front of 2234 North Fremont. Then after he parked the car I saw him go into the residence of 2234 North Fremont.

Q. That was after midnight?

A. Just about midnight of the 25th.

711 Q. Did you observe the condition of the lights at that time in the third floor apartment?

A. Yes, sir; I did.

Q. Will you tell us what you saw?

A. Well, shortly after Herbert went into that building at 2234 North Fremont I saw the lights on the third floor go off—that is, they were extinguished.

Mr. FINN. I believe that is all with this witness.

Cross-examination by Mr. WARNHOLTZ:

Q. You did not testify as to these facts during the last trial, did you, Mr. Axtell?

A. No; I did not.

Mr. WARNHOLTZ. That is all, thank you.

Re-direct examination by Mr. FINN:

Q. Were you asked about them during the last trial or not?

A. No.

Mr. FINN. That is all.

(Witness excused.)

Mr. FINN. I think the next witness will be somewhat longer, your Honor, and if your Honor desires we could——

712 The COURT. We will recess at this time, ladies and gentlemen, until ten o'clock tomorrow morning.

In the meantime, do not discuss this case with anyone or permit anyone to discuss it with you. Return here at ten o'clock tomorrow morning.

(Whereupon an adjournment was taken to Thursday, June 1, 1944 at 10:00 o'clock A. M.)

713 In the District Court of the United States for the Northern District of Illinois, Eastern Division, at Chicago

UNITED STATES OF AMERICA

vs.

HANS MAX HAUPT

Before Hon. JOHN P. BARNES, Judge, and a Jury

Thursday, June 1, 1944, 10:00 o'clock A. M.

Parties met pursuant to adjournment.

Counsel Present: Mr. J. Albert Woll, United States District Attorney for the Northern District of Illinois, Eastern Division, at Chicago, and Mr. Earle C. Hurley, and Mr. Richard G. Finn, Assistant United States District Attorneys for the Northern District of Illinois, Eastern Division, at Chicago, appeared for the United States of America; Messrs. Paul A. F. Warnholtz, Frederick J. Bertram, appeared for the Defendant.

* * * * * *

714 (The following proceedings were had in open Court, but in the absence of the jury from the courtroom:)

Mr. HURLEY. May these be marked for identification, "Government's Exhibits 65 and 66."

(Whereupon said documents were marked "Government's Exhibits 65 and 66," for identification.)

Mr. WOLL. Those are the pictures of the courtroom, if your Honor please.

The COURT. Have you a witness that can describe these?

Mr. WOLL. Yes, your Honor.

The COURT. You can tell where they are taken, where they are supposed to be taken?

Mr. AXTELL. Yes, your Honor.

The COURT. You have been sworn?

Mr. AXTELL. Yes, I have; yesterday.

The COURT. Take the stand. Have him tell what these are.

RICHARD W. AXTELL, called as a witness on behalf of the Government, having been previously duly sworn, testified further as follows in the absence of the jury:

715 Direct examination by Mr. WOLL:

Mr. WOLL. The record will show this is outside the presence of the jury, will it, your Honor?

The COURT. Yes.

By Mr. WOLL:

Q. What is your name?

A. Richard W. Axtell.

Q. You have been previously sworn, have you not, as a witness in this case?

A. Yes, sir; I was.

Q. You have?

A. Yes, sir.

Q. May these photographs be marked for identification as "Government's Exhibits A to H," inclusive?

The COURT. Yes.

(The documents produced by counsel were marked for identification "Government's Exhibits A to H.")

By Mr. WOLL:

Q. Mr. Axtell——

A. Yes, sir.

Q. Were you present in the courtroom at the time the pictures were taken of the courtroom?

A. I was.

Q. When were those pictures taken?

A. The pictures were taken on May 29th and 30th.

716 By the COURT:

Q. Was Court in session at the time?

A. No; it was not.

Q. Was the jury present or not present?

A. The jury was out of the courtroom.

By Mr. WOLL:

Q. Will you describe in general just how the pictures were taken?

A. Yes, sir. We set the camera. We measured first from my eyes to the floor. I was sitting in what is a normal position in the witness chair, and that measurement was 45 inches.

We then set the camera and measured from the center of the lense to the floor and we set that at 44 inches from the floor.

We then took pictures from that position, directly straight from the witness chair, some to the jury, some to the table used by the defense counsel.

By the COURT:

Q. How tall are you?

A. Five feet nine inches.

Q. So far as you know, of normal build?

A. Yes, sir.

By Mr. WOLL:

Q. I will show you Government's Exhibits A to H, inclusive, which are photographs of various parts in the courtroom and ask you if you can explain them?

717 THE COURT. Let me ask you first: The camera lens you said was set at one inch below, or at about one inch below the place your eyes are as you sit in the normal position and you said that is about one inch lower than your eyes?

A. That is correct.

By Mr. WOLL:

Q. I will show you Government's Exhibits A to H, which are photographs of the courtroom, and ask you if you will describe these photographs for the court and for the record; and also tell at that time where the camera was at the time of the taking of the pictures?

A. May I refer to my notes that I made at the time?

THE COURT. Yes.

Mr. WOLL. Yes.

A. The first picture, that is Government's Exhibit A, is a picture taken with the camera in the position of the witness chair as I have previously described, the center of the lens measured 44 inches to the floor and the picture was taken directly west, focused on the rear chair at the table used by the Government. That is Government's Exhibit A.

Q. What is that a picture of?

A. That picture was taken on May 29.

718 Government's Exhibit B was a picture taken with the camera in the same position; that is, the center of the lens to the floor measured 44 inches, and the camera was placed facing west, so it focused on the chair in which Mr. Finn now sits, of the Government.

THE COURT. Which is——

A. The closest chair at the government table.

THE COURT. The chair closest to the Judge's bench or at the right-hand side of the government's table as one looks from the Judge's bench. Is that correct?

A. Yes, sir.

Government's Exhibit C was a photograph of the jury box taken with the camera in the same position, that is, the center of the lens to the floor measured 44 inches and was focused on the third chair in the rear row of the jury box.

Q. The third chair in the front?

A. Yes, sir. Number 3 chair in the rear row, starting from this end.

By Mr. WOLL:

Q. Starting from the end nearest the Judge?

A. Yes, sir.

719 Government's Exhibit D is another photograph of the jury box, the camera in the same position, focused on number 7 chair in the rear row.

Government's Exhibit E was a photograph of the table—the chair closest to the Judge's bench on the left-hand side of the table used by the defense counsel, and the camera position was the same in this picture as I have previously described.

By Mr. WOLL:

Q. As a matter of fact, Mr. Axtell, have you noticed in the trial of this case where defense counsel was, whether at the government table or not?

A. From time to time he used that table, the government's table.

Government's Exhibit F is a photograph taken in the same position as Government's Exhibit E, with Special Agent J. Brady Murphy seated in the chair closest to the bench from the left-hand side of the table used by defense counsel.

Government's Exhibit G is a photograph taken from the same position as I have previously described; that is, the lens of the camera 44 inches to the floor focused on the chair in which the defendant, Hans Haupt, has been sitting, at the rear of the defense table.

Mr. BERTRAM. That is what number?

720 By Mr. WOLL:

Q. At the time of the taking of the pictures, were there two chairs at the defense table in front of the defendant's chair?

A. Yes, sir; there were.

Q. At the present time there is only one chair in front of the chair he is seated?

A. That is correct.

The COURT. Will you mark, Mr. Axtell, or can you get at these photographs?

A. Yes, sir.

Q. Will you mark the top of the back of the chair in which the defendant has been seated throughout the trial with the letter of that exhibit, which is Exhibit G, just put a "G" in ink on the chair—on the photograph of the chair—on which the defendant has been seated throughout this trial?

(Witness marks photograph.)

The COURT. I said "G" but you put an "X" for the chair?

A. Yes, I did.

Q. Well, that is all right.

A. I will also mark it with a "G".

The COURT. That is all right. The "X" is to indicate the chair in which the defendant was seated.

721 A. Exhibit H is a photograph taken from the same position as Government's Exhibit G, that is, with the camera in the same position. When these photographs were taken of the same chair occupied by the defendant in which chair he was seated—we show Special Agent J. Brady Murphy.

The COURT. Anything further?

Mr. WOLL. No.

The COURT. Any cross-examination?

Mr. BERTRAM. May we see these?

Mr. WARNHOLTZ. No cross-examination, your Honor.

The Court. Do you offer these photographs?

Mr. WOLL. Yes, we offer the photographs.

The COURT. They may be received.

(Whereupon said documents marked Government's Exhibits A to H both inclusive, were received in evidence and are as follows, to wit:)

722 The COURT. Bring in the jury. Those are not to be exhibited to the jury, gentlemen.

Mr. WOLL. We understand.

(No cross-examination. Witness excused.)

The COURT. Good morning, ladies and gentlemen.

(And thereupon the following additional proceedings were had in open court, in the presence and hearing of the jury:)

Mr. HURLEY. If the Court please, and counsel, we desire to offer in evidence as Government's Exhibit 65 the naturalization certificate of the defendant Hans Max Haupt. As I understand it, counsel agrees that the Hans Max Haupt whose citizenship is evidenced by Government's Exhibit 65 is the same defendant, Hans Hax Haupt, who is on trial here.

Mr. WARNHOLTZ. That is correct.

The COURT. It may be received.

(Whereupon said document marked Government's Exhibit 65, was received in evidence and is in words and figures as follows, to wit:)

723 Mr. HURLEY. We also wish to offer in evidence as Government's Exhibit 66 a certified copy of the Declaration of War, dated December 11, 1941, being the Declaration of War between the United States and the government of Germany.

Mr. WARNHOLTZ. No objection.

The COURT. It may be received.

(Whereupon said document, marked Government's Exhibt 66, was received in evidence and is in words and figures as follows, to wit:)

724 JOHN A. LYNCH, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. FINN:

Q. Will you state your name?

A. John A. Lynch.

Q. What is your business or occupation, Mr. Lynch?

A. I am a Special Agent of the FBI, Federal Bureau of Investigation.

Q. How long have you been a Special Agent of the Federal Bureau of Investigation?

A. Approximately four years.

Q. Were you engaged in that occupation of June of 1942?

A. I was.

Q. And in the course of your duties were you assigned to a portion of the investigation of the Haupt case?

A. I was.

Q. Now, calling your attention to the 22nd day of June 1942—that is on a Monday—did you go to the vicinity of 2234 North Fremont Street, Chicago, Illinois?

725 A. I did.

Q. What time did you get there, Mr. Lynch?

A. I arrived there approximately 5:45 P. M.

Q. Now, calling your attention to approximately 7:30 P. M., will you tell us what, if anything you observed at that time?

A. At 7:30 P. M. I observed Mr. and Mrs. Haupt and Herbert Haupt emerge from the residence at 2234 North Fremont Street and enter the Plymouth automobile and proceed south on Fremont Street.

Q. Were you in an automobile at the time?

A. I was.

Q. And who was there with you, if you remember?

A. Agent Axtell was with me.

Q. Now, did you follow this automobile?

A. We did.

Q. Will you tell us what you observed as you followed it before—strike that out, if you will please.

Before or at the time these people entered—these three, Hans Haupt, Erna Haupt and Herbert Haupt entered the automobile, who took the driver's seat?

A. Herbert Haupt sat behind the wheel.

Q. Now, did he continue to drive the car or not?

726 A. He drove the car south on Fremont Street and then west for several blocks, turned north; then turned west again there, after proceeding a block south he exchanged with—he exchanged positions with Mr. Haupt.

Q. That is a conclusion. Will you just tell us what you saw?

A. I saw Herbert Haupt get out of the car, walk around the rear, get in the other side. I saw Mr. Max Haupt emerge from his side, get in behind the driver's wheel.

Q. Now, did you continue to follow this car?

A. We did.

Q. Where did it go?

A. It proceeded north to 6361 North Leoti street.

Q. Did you later ascertain whose residence that was?

A. Yes, sir; that residence was the residence of Mr. Grunau.

Q. All right. Just tell us what happened when the car drove up in front of 6361 North Leoti Avenue?

A. The car arrived there approximately 8:00 o'clock and parked in front of the residence. The three occupants emerged from the car and proceeded up the walk, toward the door of the house.

727 Enroute they proceeded to the left, across the lawn and met two women who were proceeding towards them from the driveway, and after a few minutes conversation they all entered the house.

Q. All right, did you remain there?

A. We remained there.

Q. Did you see any one else enter the residence?

A. Approximately forty-five minutes later another automobile drove up and a man got out and entered the residence of 6361 North Leoti.

Q. Now, what happened after that, Mr. Lynch?

A. Well, after that, approximately 9:30 P. M. Mr. and Mrs. Haupt and Herbert Haupt emerged from the residence at 6361 North Leoti and re-entered the Plymouth automobile.

Q. Who did you see emerge?

A. Mr. and Mrs. Haupt——

Q. I see.

A. And Herbert.

Q. All right. And what did they do after they entered the Plymouth automobile? Did you see who was driving at that time?

A. At that time Mr. Max Haupt was driving.

Q. Do you mean Hans Max Haupt?

A. Hans Max Haupt.

Q. By the way, do you see Mr. Haupt in the courtroom?

728 A. Yes, I do.

Q. Will you point him out?

A. The man in the blue seat at the second table there.

Mr. Finn. Indicating the defendant, Hans Max Haupt.

Q. All right. Where did they go from there?

A. From there they proceeded to 7236 North Odell Avenue.

Q. What was done at that place?

A. At that residence the car was parked and the three individuals emerged from the car and entered that address, 7236 North Odell.

Q. Did you later ascertain whose address that was?

A. Yes, sir. That was the residence of Mr. Koch.

Q. Now, how long did they remain in there?

A. They remained in there approximately half an hour.

Q. Then what happened?

A. They emerged, entered the car and proceeded back to 2234 North Fremont Street.

Q. Then what happened there?

A. At that point Mrs. Haupt and Herbert Haupt got out
729 of the car, entered the residence at 2234 North Fremont Street. Mr. Hans Max Haupt drove the Plymouth south on Fremont Street.

Q. All right. Calling your attention to 11:30 a. m. approximately, on June 23, 1942, were you in the vicinity of 2234 North Fremont Street?

A. I was.

Q. Will you tell us—is that when you went on duty?

A. That is right.

Q. Will you tell us approximately what time——

Mr. FINN. Strike that out.

Q. Calling your attention to approximately 12:30 p. m. on that day what occurred?

A. At 12:20 p. m., or thereabouts, Herbert Haupt and Mrs. Haupt emerged from the residence at 2234 North Fremont Street and proceeded on foot south towards Webster Avenue.

When they reached the corner of Webster and Fremont they proceeded west towards the elevated station at which point Herbert kissed his mother goodbye. Mrs. Haupt entered the railway or elevated station and Herbert continued walking away on foot.

Q. Did you see him go anywhere that afternoon?

A. Yes, sir.

730 Q. Calling your attention to approximately 1:50 p. m. will you tell us what if anything occurred at that time?

A. At approximately 1:50 p. m. Herbert Haupt entered the Belmont Theater on Belmont Avenue.

Q. Did you see him later emerge from the theater?

A. Yes, sir; at approximately 4:30.

Q. Now calling your attention to 5:15 p. m. on that day, where were you at that time?

A. At 5:15 p. m. I was in the vicinity of 2234 North Fremont

Street, having followed Herbert Haupt from the Belmont Theater.

At that time, 5:15 p. m., I saw Herbert Haupt enter the residence at 2234 North Fremont Street.

Q. All right. Calling your attention to around 6:00 o'clock in the evening, can you tell us what occurred?

A. At six o'clock I observed Hans Max Haupt and Mrs. Erna Haupt and Herbert Haupt emerge from the residence at 2234 North Fremont and enter the Plymouth automobile which was parked in front of the house.

Q. Where did they go?

A. They proceeded to Wagner's restaurant, at the corner of Webster, Larrabee, and Lincoln.

731 Q. Did they later emerge from there?

A. Yes.

Q. Did you see them later emerge from there?

A. I did; approximately 6:45 P. M.

Q. Will you tell us what they did then?

A. After they emerged they all conversed besides the car for several minutes. Then Herbert Haupt shook hands with his mother. She walked away. Herbert and Mr. Hans Max Haupt went into the Plymouth automobile and proceeded to the Warner Motor Sales, the corner of Sheffield and Diversey Parkway.

Q. Now, did they later come out of there?

A. They did. They emerged from there and returned to 2234 North Fremont Street where the car was parked.

Q. What occurred there?

A. Both emerged from the car and conversed for a few minutes. Then Mr. Max Hans Haupt entered the residence of 2234 North Fremont Street and Herbert Haupt proceeded south on Fremont alone to Webster Avenue.

Q. Did you later see him that evening?

A. Yes, I did. I followed him.

Q. Will you tell us what you observed?

A. Well, after proceeding south to Webster Avenue
732 Herbert Haupt proceeded in an easterly direction to the corner of Larrabee and Webster Avenues where he paced the corner for approximately twenty minutes.

After that he proceeded back on Webster Avenue and boarded a street car and rode several blocks and got off.

He then proceeded to walk west, when he met his father, Mr. Hans Max Haupt and both of them returned east to Halsted Street and entered a beer distributing agency about three doors south of Webster Avenue on Halsted.

Q. How long did they stay in there?

A. They only remained in there about five minutes. Then they proceeded to 2234 North Fremont Street where they both entered.

Q. What time was it when they entered as you recollect?

A. At 2234 North Fremont?

Q. Yes.

A. It was approximately 8:35 or 8:40.

Q. Now, approximately 10:15 P. M. on that evening, can you tell us what, if anything, occurred?

A. At about 10:15 P. M. I was parked south of 2234 North Fremont and I saw the lights of the Plymouth automobile go on and then saw Herbert Haupt driving south on Fremont
733 Street towards Webster Avenue. He was accompanied by a young lady.

Q. Did you follow that car?

A. We did.

Q. Where did they go?

A. The car proceeded west to Ashland Avenue. Then went north to Tenycke which is a tavern at 3719 North Ashland Avenue. The car was parked there and Herbert Haupt and the young lady entered.

Q. Were you then relieved from duty?

A. No, sir.

Q. I see. Calling your attention to 12:30 A. M. on the 24th—that would be the same night but the next day; is that correct?

A. Yes, sir.

Q. 12:30 A. M. on June 24, 1942, what, if anything, did you observe?

A. At 12:30 A. M. I observed Herbert Haupt park the Plymouth automobile in front of the resiidence at 2234 North Fremont Street, then enter the residence at that address.

Q. In other words, when you say "enter the residence" in all of these instances, will you tell us just what entrance you mean?

A. Well, I saw him enter a sidewalk, pass the iron gate
734 which is in front of the residence, proceed up the steps to the porch. From the position that I was in I could not see the door.

Q. Is that the front porch you are speaking of?

A. That is right.

Q. Showing you Government's Exhibit 3 for identification, can you tell us who that is?

A. Herbert Haupt.

Q. Is that the man that you describe in all these instances?

A. That is.

Q. I will show you Government's Exhibits 60 for identification.

61 and 62 and ask you if you can tell us whether that is the residence you were speaking of?

A. It is the residence of Mr. Max Hans Haupt, at 2234 North Fremont Street.

Q. When you say this is, you are referring to Government's Exhibit 60. Can you tell us where that picture was taken from?

A. It was taken directly east of the residence.

Q. Across the street?

A. That is right; on the east side of the street.

Q. Government's Exhibit 61 for identification was taken from what angle?

A. From slightly northeast. That is also the residence of this one.

733 Q. Government's Exhibit 61 is what?

A. That is the porch, steps, and entrance of 2234 North Fremont Street.

Q. Is this a true and correct, accurate close up of that porch you are referring to?

A. That is very clear.

Q. Is there any other place that a person can go on that porch, after he goes up the stairs? I mean, is there any other way to go around the side of the building after you get on the porch?

A. No, there is not; only one door.

Q. Now, calling your attention to approximately 7:00 o'clock in the morning of the 24th; I think you said just a moment ago you saw Herbert Haupt go in at 12:30 A. M.?

A. That is right.

Q. At 7:00 o'clock in the morning on June 24, 1942, will you tell us what, if anything you observed?

A. At 7:00 o'clock I saw Mr. Max Hans Haupt emerge in his work clothes and enter the Plymouth.

Q. From where?

A. He emerged in his work clothes at 2234 North Fremont Street and entered the Plymouth which Herbert had previously parked at 12:30 A. M. that same morning.

736 Q. Well, what did you see him do?

A. Well, he drove south on Fremont Street.

Q. Calling your attention to 1:00 P. M. on that same day, June 24, 1942, what if anything did you see?

A. At 1:00 P. M. on June 24 I noticed Herbert Haupt emerge from 2234 North Fremont Street, stand in front of the residence for about a minute at which time a taxicab drove up and he entered the taxicab and the taxicab proceeded south on Fremont Street.

Q. All right. Now calling your attention to June 25, 1942, the next day—I think that would be on a Thursday, would it not?

A. That is right.

Q. Were you in the vicinity of 2234 North Fremont Street at about 4:20 P. M.?

A. Yes, sir; I was.

Q. What if anything did you observe on that occasion?

A. At that time I observed Herbert Haupt drive north on Fremont Street in a Pontiac coupe, park in front of 2234 North Fremont Street and enter the residence there.

737 Q. All right. Did you follow him later that afternoon?

A. Yes, sir.

Q. Pardon me. Strike that out. Had you been following him before that time?

A. All day; yes, sir.

Q. Did you recognize the man that he was with that afternoon prior to his entry?

A. What did I?

Q. I said, did you recognize—did you know who he was?

A. Yes, sir; William Warnecke.

Mr. BERTRAM. What?

Mr. FINN. Wernecke.

Q. Calling your attention to the 26th day of June 1942, which was on a Saturday morning at about 1:50 A. M., did you observe anything at that time?

A. I did.

Mr. BERTRAM. What day?

Mr. FINN. June 27th. That would be Saturday morning, 1:50 A. M.

Q. Will you tell us what you observed at 1:50 A. M. on June 27, 1942?

A. At 1:50 A. M. or thereabouts, approximately, I observed Herbert Haupt park the Pontiac coupe in front of the
738 residence at 2234 North Fremont Street; then get out of the car. Also with him at that time was another young man. They conversed in front of the residence for several minutes. Then parted.

Herbert Haupt entered the residence of 2234 North Fremont Street and the other young man proceeded south on Fremont Street.

Q. Now, calling your attention to 9:05 A. M., or approximately thereabouts on that same morning, June 27, 1942, what, if anything did you observe?

A. At that time I observed Herbert Haupt emerge from his residence at 2234 North Fremont Street and enter the Pontiac coupe and proceed south on Fremont Street.

Q. Did you follow him?

A. I did.

Q. Can you tell us whether he was apprehended there?

A. Yes, sir.

Q. Or thereabouts?

A. Yes, sir. When Herbert Haupt reached Webster Avenue he proceeded west on Webster, passed the elevated station. At that point he was apprehended.

Mr. FINN. That is all with this witness.

Mr. WARNHOLTZ. Pardon me one second. No cross-examination.

739 The WITNESS. All right, sir.

(No cross-examination. Witness excused.)

Mr. FINN. Mr. Robe, please.

PENNEL V. ROBE, a witness called on behalf of the Government, was duly sworn and testified further as follows:

Direct examination by Mr. FINN:

Q. You are the same Mr. Robe who testified yesterday, are you not?

A. Yes, sir; I am.

Q. Mr. Robe, in the course of your duties as special agent——

The COURT. You are Robe?

A. Yes, sir.

By Mr. FINN:

Q. In the course of your duties as special agent of the Federal Bureau of Investigation, were you assigned, in June of 1942, to participate in the surveillance of Herbert Haupt?

A. Yes, sir; I was.

Q. Calling your attention to Monday, June 22, 1942, at approximately 7:30 P. M. were you in the vicinity of 2234 North

740 Fremont Street, Chicago, Illinois?

A. Yes, sir.

Q. Will you tell us what, if anything, you observed at that time?

A. I observed a young man and older lady and older man come out of the address at 2234 North Fremont Street.

Q. All right, will you tell us what they did?

A. They entered a car which was a 1940 Plymouth, two door sedan and proceeded to 6361 North Leoti.

Q. At the time when they first got into the car, can you tell us which one of the men did the driving?

A. The younger man was driving. They proceeded a short distance.

Q. Did he remain at that post or was there a change later?

A. There was a change made after approximately four blocks. Then the older man drove.

Q. Now, will you tell us did you later ascertain——

Mr. FINN. Strike that out.

Q. Did you later follow the younger man and also see the older man on numerous occasions during the week?

A. Yes, sir; I did.

Q. Do you see the older man in the courtroom here?

741 A. Yes.

Q. Will you point him out, please?

A. He is the gentleman there in the dark suit, to the end.

Mr. FINN. Indicating the defendant, Hans Max Haupt.

Q. Is that the same man you saw emerge on Monday, June 22nd at about 7:30 P. M.?

A. Yes, sir.

Q. I show you Government's Exhibit 3 for identification and ask you if you can tell us who that is?

A. That is Herbert Haupt.

Q. Where did you first see him?

A. I first saw him as he left the address at 2234 North Fremont on June 22, 1942 at 7:30 P. M.

Q. Now, did you also in the course of that week see the woman who was with them?

A. Yes, sir; I did.

Q. Do you know who she was?

A. She was Mrs. Erna Haupt.

Q. All right. You said you followed the car to 6361 North Leoti, Chicago. Is that correct?

A. Yes, sir.

Q. Will you tell us what took place there?

742 A. Mr. and Mrs. Haupt and Herbert Haupt, after arriving at 6361 North Leoti got out of their car and Herbert Haupt went to the door and rang the bell. Two women appeared in the yard and they talked a few minutes to Mr. and Mrs. Haupt and Herbert Haupt. Then they entered the house at 6361 North Leoti.

Q. When did they come out of that place?

A. At approximately 9:30 P. M.

Q. Did you see them come out?

A. Yes, sir.

Q. What did they do then?

A. They entered the Plymouth automobile and drove away from 6361 North Leoti.

Q. Who was driving?

A. Mr. Haupt.

Q. And where did they go?

A. That I do not know.

Q. Were you relieved at that time?

A. I was relieved and discontinued the surveillance.

Q. After you had first—while you were waiting near the Grunau residence there, did you see anyone else enter the residence?

A. Yes, sir. There was another individual that came to the residence after Mr. and Mrs. Haupt and Herbert Haupt arrived.

Q. Did this man arrive by automobile, foot, or what?

743 A. Yes, sir; came by automobile.

Q. Did he enter the residence, also?

A. Yes, sir.

Q. Calling your attention to Wednesday, June 24, 1942, were you in the vicinity of 2234 North Fremont Street, at approximately 6:00 P. M.?

A. Yes, sir.

Q. Will you tell us what you observed at that time?

A. I saw Herbert Haupt and Mr. Haupt come out of the residence at 2234 North Fremont.

Q. What did you see them do?

A. They both entered the Plymouth automobile with Mr. Haupt driving and they drove to the Warner Motor Sales at 958 Diversey Parkway.

Q. This was on Wednesday, June 24th; is that correct?

A. Yes, sir.

Q. Did you wait outside there?

A. Yes, sir.

Q. How long were they in the Warner Motor Sales?

A. Approximately thirty minutes.

Q. Calling your attention to approximately 6:30 P. M., what, if anything, did you see?

A. I saw Herbert Haupt leave the Warner Motor Sales, driving the 1941 Pontiac coupe.

744 Q. Did you follow that car?

A. Yes, sir.

Q. Was that the same car that they had, that Hans Haupt had driven to that Motor Sales or a different car?

A. It was a different car.

Q. By the way, who was with you at the time?

A. Former Special Agent Berg.

Q. At approximately 6:35 P. M. what happened?

A. Herbert Haupt arrived at his home at 2234 North Fremont Street.

Q. What, if anything——

A. Entered the house at that time.

Q. What?

A. Entered the house at that time.

Q. You say he entered the house. Which door did he enter?

A. The front door.

Q. Now, at about 6:45 P. M., what if anything occurred?

A. Herbert Haupt came out of the residence at 2234 North Fremont Street.

Q. And where did he go then?

A. He drove to 1752 Cornelia Street.

Q. And from there?

A. From there?

745 Q. How long did he stay there?

A. Only a matter of a few minutes. He went to the front door, returned, left immediately.

Q. Then where did he go?

A. From there he went to 6250 North Wayne Avenue.

Q. How long did he remain at 6250 North Wayne Street?

A. Just a short time. He went to the door, rang the doorbell, and entered the car and left.

Q. Then where did he go?

A. Drove to a filling station at 6100 North Clark Street, remained there a few minutes, returned to 6250 North Wayne.

Q. Subsequently did he return to the vicinity of 2234 North Fremont Street?

A. Yes, sir.

Q. At about what time?

A. That was approximately 9:15.

Q. Did he go into the house at that time or not?

A. No, sir. He started, but he did not go in.

Q. Where did he go?

A. Well, he went to the front porch, turned around and came back and entered the car.

Q. Then where did he go?

A. From there he drove to the Blue Danube Cafe

746 on North Avenue.

Q. How long did he remain there?

A. Appproximately ten or fifteen minutes.

Q. And then where did he go?

A. He went to the Vine Gardens on North Avenue.

Q. How long did he remain there?

A. He arrived there around 10:00 P. M., and stayed there approximately until 12:45 A. M. on June 25.

Q. What did you observe at approximately 12:53 A. M., June 25? That would be the early morning?

A. I observed Herbert Haupt enter the residence at 2234 North Fremont Street.

Q. Who was with you at that time, Mr. Robe, if you remember?

A. Agent Berg.

Q. At approximately 2:00 A. M. of that same morning, June 25, 1942, what if anything did you see at that time?

A. I was in the vicinity of 6250 North Wayne Street.

Q. Whose residence was that, by the way?
A. I later determined it was the residence of William Warnecke.
Q. How long was he in there?
A. Until approximately 10:00 A. M.
747 Q. Did he enter that residence there?
A. I do not know. I did not see him go in.
Q. Excuse me. Were you waiting outside, is that it?
A. Yes, sir.
Q. Did he come out of that residence?
A. Yes, sir.
Q. Herbert Haupt?
A. Yes, sir.
Q. At approximately 4:20 P. M. on that same day, what did you see?
A. I observed Herbert Haupt entering the residence at 2234 North Fremont Street.
Q. That was on June 25, 1942, is that correct?
A. Yes, sir.
Q. Calling your attention to Saturday, June 27, 1942, at approximately 1:50 A. M., what if anything did you observe?
A. I observed Herbert Haupt entering the residence at 2234 North Fremont Street.
Q. Had you followed him from some other place to that point?
A. Yes, sir.
Q. At approximately, 9:05 A. M., what if anything did you observe?
748 A. I observe Herbert Haupt leave the residence at 2234 North Fremont Street.
Q. Did you follow him?
A. Yes, sir.
Q. He was apprehended shortly thereafter, was he not?
A. Yes, sir.
Q. Taken into custody?
A. Yes, sir.
Mr. FINN. I think that is all with this witness.

Cross-examination by MR. WARNHOLTZ:

Q. Mr. Robe, you stated that "they rang the doorbell" on June 22, 1942, at 22—what is that number—63 something?
Mr. FINN. I will object to that on the ground it is a misinterpretation of what the witness said.
Mr. WARNHOLTZ. Just a minute.
Mr. FINN. Just a moment, please. I am making an objection to the Court.
My objection is that the witness said, as I understood it, that Herbert Haupt rang the doorbell. I may have misunderstood it.

It is my understanding of it. I think we can clear it up from the record.

749 Mr. WARNHOLTZ. Unless counsel knows he should not state what the witness said. He made the statement "they rang the doorbell."

Mr. FINN. May we have the record checked on that, if your Honor please?

The COURT. Yes.

(Record read as follows: Mr. and Mrs. Haupt and Herbert Haupt, after arriving at 6361 North Leoti got out of their car and Herbert Haupt went to the door and rang the doorbell.)

By Mr. WARNHOLTZ:

Q. You say Herbert Haupt rang the doorbell. What happened right after that?

A. Two women appeared in the yard at 6361 North Leoti.

Q. Do you know where they came from?

A. No, sir; I do not.

Q. Were they in the yard when this car pulled up?

A. I did not see them in the yard. They were apparently at the side or at the back of the house.

Mr. WARNHOLTZ. That is all. Thank you kindly.

(Witness excused.)

750 JOSEPH W. KRIOFSKE, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. HURLEY:

Q. Will you state your name?

A. Joseph W. Kriofske.

Q. You are a special agent of the Federal Bureau of Investigation, are you not?

A. I am.

Q. Were you a special agent of the Federal Bureau of Investigation during the month of June 1942?

A. Yes, sir.

Q. Calling your attention to Monday, June 22, 1942, did you have occasion to go into the vicinity of 2234 North Fremont Street?

A. Yes, sir.

Q. Who went with you at that time?

A. I was accompanied by Special Agent P. V. Robe in one automobile and special agents Axtell and Lynch was in another automobile.

Q. About what time did you arrive in the vicinity of 2234 North Fremont Street on that day?

A. We arrived at approximately 5:45 P. M.

751 Q. Where were you parked in reference to the address of 2234 North Fremont on that occasion?

A. We were parked on the east side of Fremont, north of Webster.

Q. Calling your attention to about 7:30 P. M. on June 22, 1942, did you observe anything with reference to the address of 2234 North Fremont Street?

A. At that time we observed three individuals coming out of the house at 2234 North Fremont.

Q. When you say "the house" was that a house, an apartment building, or what type of structure?

A. That is a three floor building with——

Q. Where did these individuals come out of?

A. They came out of the first-floor landing.

Q. The front entrance, is that right?

A. The front entrance.

Q. I will show you Government's Exhibits 60, 61, and 62, and ask you whether or not those are true photographs of the address at 2234 North Fremont Street? Will you look at them, Mr. Kriofske?

A. Those are three pictures of the residence at 2234 North Fremont.

752 Q. These individuals whom you saw come out of that entrance, came out of that entrance portrayed by those exhibits, is that correct?

A. Yes, sir.

Q. Did you later learn who those individuals were?

A. Yes; sir; I did.

Q. I show you Government's Exhibit 3 in evidence and ask you whether or not that is one of the individuals who came out of the front entrance of 2234 North Fremont Street at the time you have indicated?

A. Yes, sir; that is.

Q. And who were the other two individuals?

A. Mr. and Mrs Haupt.

Q. Do you see the person whom you have named as Mr. Haupt in the courtroom?

A. Yes, sir; I do.

Q. Will you point him out?

A. (Indicating.)

Mr. HURLEY. Indicating for the purpose of the record the defendant Hans Max Haupt.

Q. What did Herbert Haupt, Hans Haupt, and Erna Haupt do after they came out of that apartment building that day?

A. They got into a 1940 two door Plymouth sedan, and Herbert Haupt——

753 Q. Where was that car with reference to 2234 North Fremont Street?

A. It was right in front of their home.

Q. And what happened after they entered the car?

A. Herbert drove the car approximately two blocks, at which he stopped the car and changed positions with his father who then proceeded to drive.

Q. Will you tell us just exactly what they did when you say "changed positions?"

A. Well, Herbert Haupt was driving and his father was sitting in the front seat. When the car came to a stop each one of them got out of the car and reversed their positions, Mr. Haupt taking the wheel of the car.

Q. Upon driving away did they go to another address?

A. Yes, sir, they went to 6361 North Leoti, arriving there approximately 8:00 P.M.

Q. Did you see them arrive at that address?

A. Yes, sir; I did.

Q. You were in company at that time with whom?

A. With Special Agent P. V. Robe.

Q. What did Hans Haupt, Erna Haupt, and Herbert Haupt do when they arrived at 6361 North Leoti?

A. Herbert Haupt went up to the front door of that
754 address and rang the bell and waited a few minutes and two girls or two women—pardon me—appeared from the rear of the house and they greeted one another and went into the house together.

Q. Who went into the house?

A. Mr. and Mrs. Haupt, Herbert Haupt, and the two women.

Q. Do you know now who lived at that address, 6361 Leoti?

A. Yes, sir.

Q. Who lived there at that time?

A. Andreas Conrad Grunau.

Q. How long did Hans Haupt, Erna Haupt, and Herbert Haupt remain inside the residence at 6361 North Leoti?

A. They remained in the house until approximately 9:30 P.M.

Q. Did any one else appear and enter the residence at 6361 North Leoti while Mr. and Mrs. Haupt and Herbert Haupt was in there?

A. Yes, sir.

Q. About what time, if you recall, did that individual enter the residence at 6361 North Leoti?

A. About 8:30 P.M.

Q. Do you know now who that individual was that entered the home at that time?

755 A. Yes, sir.

Q. Who was it?
A. Andreas Conrad Grunau.
Q. Now, did you see Mr. and Mrs. Haupt and Herbert Haupt come out of the house at 6361 North Leoti that evening?
A. Yes, sir.
Q. About what time?
A. Approximately 9:30 P. M.
Q. You were relieved shortly thereafter, were you not?
A. We were relieved shortly after 9:30 P. M. by agents Snyder and Connerty: yes, sir.
Mr. HURLEY. Cross-examine.
Mr. WARNHOLTZ. No cross-examination.
(No cross-examination. Witness excused.)

756 JAMES C. BERG, called as a witness on behalf of the Government, after having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. WOLL:

Q. What is your name?
A. James C. Berg.
Q. You are a Special Agent for the Federal Bureau of Investigation, are you?
A. No, sir; I am not.
Q. What is your occupation?
A. I am a police officer.
Q. A police officer?
A. Yes, sir.
Q. Were you a Special Agent for the Federal Bureau of Investigation——
The COURT. What is your name? Burke?
Mr. WOLL. Berg.
The WITNESS. Berg, your Honor.

By Mr. WOLL:

Q. Were you Special Agent on June 24, 1942?
A. I was.
Q. Calling your attention to that day, did you take part in a surveillance of 2234 North Fremont Street, in the City of Chicago?
A. I did.
757 Q. What position did you take in relation to that home?
A. The car I was in was parked at the intersection of Belden Avenue, north on Fremont.
Q. Approximately how far was that from 2234 North Fremont?
A. Approximately two hundred feet.
Q. Now, calling your attention to about 5:30 that afternoon,

June 24, 1942, did you notice anyone coming in or going out of 2234 Fremont?

A. Yes, sir.

Q. Did you recognize the individual or individuals?

A. A young man walked in to 2234 North Fremont.

Q. Did you later ascertain the identity of that young man?

A. Yes, sir.

Q. Who was that young man?

A. Herbert Haupt.

Q. And how did you stay at the corner of Belden Avenue and North Fremont Street?

A. Yes, sir.

Q. Did you later see that young man again, Herbert Haupt?

A. Yes, sir.

Q. When?

A. About 6 o'clock the same day, in the evening.

758 Q. When you saw him, what was he doing?

A. He came out of 2234 North Fremont with another elderly man.

Q. Do you believe you can recognize or identify that elderly man?

A. Yes, sir.

Q. Do you see him in the courtroom here?

A. Yes, sir.

Q. Point him out.

A. He is the gentleman sitting at the far end of the table with a moustache and dark suit on.

Mr. WOLL. Indicating the defendant Hans Max Haupt.

Q. What time was this?

A. About approximately six o'clock in the evening.

Q. What did these two individuals do, if anything?

A. Both individuals got into a car that was parked in front of 2234 North Fremont.

Mr. WOLL. Yes.

Q. And then?

A. Then they left the residence there, drove to Warner Motor Sales, located on Diversey Parkway and Sheffield Avenue.

Q. When they arrived there, what did they do?

A. At that time they went into the salesroom, both of the individuals.

Q. And did you stand around there, sit around in the

759 car and observe them?

A. Yes; the car was parked about a hundred feet from the salesroom on Sheffield.

Q. Now, did you see either one of those two men later?

A. I saw one of them later; yes, sir.

Q. Which one did you see later?
A. I saw Herbert Haupt.
Q. When you saw him what was he doing?
A. He was driving south on Sheffield in a Pontiac coupe.
Q. And will you describe that Pontiac coupe?
A. It was a black Pontiac coupe, 1941 model with red wheels. It had new license plates on the car.
Q. Did you see from where he came in the Pontiac automobile?
A. No, I didn't. I didn't see where he came from.
Q. The last time prior to that you saw him at the Warner Motor Sales?
A. I saw him enter the Warner Motor Sales.
Q. How long after he entered the Warner Motor Sales, did you see him in this Pontiac car you described?
A. Approximately twenty, twenty-five minutes later.
Q. Did you follow that Pontiac?
A. Yes, sir.
Q. Where did it go?
760 A. The car was going south in Sheffield Avenue, and went back to 2234 North Freemont.
Q. Did you see what Herbert Haupt did then?
A. He got out of the car, went up to the house at 2234 North Fremont.
Q. Did he go up the front steps?
A. Yes, sir.
Q. What time did he go up the front steps?
A. Probably around 6:35 or 6:40.
Q. Did you see him later?
A. Yes, sir; I saw him later.
Q. What was he doing then?
A. Approximately ten minutes later, the same day, he came out of the house, entered his car and drove away.
Q. Did you follow him?
A. Yes, sir.
Q. Where did he go?
A. He drove south on Belmont Avenue to Western Avenue and turned right there and stopped at Rosemeyer's Grocery Store at 1056 Western.
Q. To shorten this, did he go to an address, 6250 North Wayne Avenue?
A. Yes, sir.
Q. Then to 1752 West Cornelia?
A. Yes, sir.
Q. How many times did he go to those addresses?
A. He went to 1752 West Cornelia twice, and to 6250 North Wayne Avenue three times.

761 Q. Do you know who lives at either one of those two addresses?

A. No, sir; I don't.

Q. Did he then return home?

A. He did return home; yes.

Q. Approximately what time was that?

A. He returned home around 9:15 in the evening.

Q. When he returned, what was he doing?

A. He got out of the car. He looked around at the automobile, then he got back into the car again and flashed the lights on and off. Then he got out of the car and walked up to the fence surrounding 2234 North Fremont. Then he turned around and got back into his car and drove away.

Q. Did you follow him?

A. Yes, sir.

Q. Where did he go at that time?

A. He went to the Blue Danube Tavern located on North Avenue.

Q. Did he go any other place?

A. Not that I know of, sir.

Q. How long did he stay in this place on North Avenue?

A. He stayed there about five minutes.

Q. What did he do then?

A. Then he left the Blue Danube and went to the Wine—Vine Gardens, located up on North Avenue.

762 Q. Did you see him going to the Vine Gardens?

A. Yes, sir.

Q. Did you stay there?

A. Yes, sir.

Q. Did he come out?

A. Yes, sir.

Q. What time did he come out?

A. Oh, around 12:45 A. M., the morning of June 25th.

Q. Did you follow him?

A. Yes, sir.

Q. Where did he go then?

A. He left the Vine Gardens and proceeded to 2234 North Fremont.

Q. What time did he arrive at 2234 North Fremont?

A. Approximately 1 A. M.

Q. Of June 25, 1942?

A. Yes, sir.

Q. What did he do after he arrived at that address?

A. He got out of the car and proceeded to 2234 North Fremont Avenue, the resident there.

Q. Did he walk into the building?

A. He was walking up the steps, yes, sir.

Mr. WOLL. That will be all.

Cross-examination by Mr. WARNHOLTZ:

Q. Mr. Berg?

A. Yes, sir.

Q. Where do you live at the present time?

A. I live in Detroit, Michigan, sir.

763 Q. You are a police officer in that city?

A. Yes, sir.

Q. Did you testify just now from recollection of the facts you described?

A. Yes, sir.

Q. You remembered just now that it was 12:45 in the morning of June 25th, 1942, when Herbert Haupt came out of the Vine Gardens?

A. Approximately that time, yes, sir.

Q. Did you refresh your recollection before testifying by reading over the records?

A. Yes; I refreshed my recollection.

Q. When was that?

A. About three days ago.

Q. Then you are testifying from recollection after refreshing it by reading from records?

A. No; this is my independent recollection.

Q. You remember that independently, too, that on June 24, 1942, it was at 5:30 P. M. when Herbert Haupt came out of the residence, you remember the time of the day and the exact date and all that from your recollection?

A. He didn't come out at the time. He was going into the house, sir.

Q. He was going into it?

A. Yes, sir.

Q. You remember that day?

A. Yes, sir.

764 Q. The date and the hour and everything?

A. The approximate time; yes, sir.

Q. Independent of refreshing your recollection from reading records?

A. I refreshed my recollection. This is my independent recollection; yes, sir.

Mr. WARNHOLTZ. Thank you, kindly.

Redirect examination by Mr. WOLL:

Q. Mr. Berg, do you pay any particular attention to note the times, that is, at the time of these occurrences?

A. Oh, yes; I did, absolutely.

Q. And that was one of the purposes you were out there for, to note the time?

A. That is what I was out there for.

Mr. WOLL. That is all.

Mr. WARNHOLTZ. Let me ask you this, Mr. Berg.

Re-cross-examination by Mr. WARNHOLTZ:

Q. In your present work as a police officer, did you also have occasion to note those particular times?

A. Yes, sir.

Q. And all that you carried around for two years in your mind?

A. No; no; no, sir.

765 Mr. WARNHOLTZ. Thank you kindly. That is all.

Mr. WOLL. That is all.

The COURT. Take a short recess, ladies and gentlemen.

(Thereupon a recess was had and on the coming in of court after recess, the trial of this cause was resumed as follows, that is to say:)

The COURT. Proceed.

PHILLIP C. DUNNE, called as a witness on behalf of the Government, after having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. WOLL:

Q. What is your name?

A. Phillip C. Dunne.

Q. D-u-n-n-e?

A. That is right.

Q. You are a Special Agent of the Federal Bureau of Investigation, are you?

A. Yes, sir.

Q. Were you on June 24th, 1942?

A. Yes, sir.

Q. Calling your attention to June the 24th, 1942, did you take part in surveillance of a building at 2234 North Fremont Street, in the city of Chicago?

A. I did.

766 Q. Calling your attention to approximately 9:15 on the evening of that day, did you observe a young man in an automobile?

A. I did.

Q. Where was the automobile and where was the young man?

A. The automobile was parked on the west side of Fremont Street, facing south.

Q. And where was the young man?

A. When the automobile drove up the young man was in the car.

Q. And what did you observe him do, if anything?

A. When he first drove up, he got out of the car, walked up the stairs of the building at 2234 North Fremont. However, he did not enter the vestibule. He returned down the stairs, walked through the areaway located on the south side of the building. He remained in the areaway a short time and returned to the street, at which time he again entered the automobile.

Q. What did he do, if anything, then?

A. When he got into the automobile, he turned on the dome light in the car, sat there with the light on for a few minutes. He then turned the dome light off, got out of the car and inspected the headlights which at that time were lit.

767 Q. At that time, did you have an opportunity to observe his appearance?

A. I did.

Q. I will show you Government's Exhibit 3 and ask you if you recognize that picture?

A. I do.

Q. And is that the picture of the young man you are speaking of?

A. That is.

Q. Calling your attention to the early morning of June 25, 1942, at approximately 1 A. M., did you see the individual whose photograph you have just identified?

A. Yes, sir; I did.

Mr. Wolf. I will refer to him as Herbert Haupt from now on.

Q. Where was this individual or Herbert Haupt at that time?

A. At that time, Herbert Haupt drove up from the north on Fremont in his automobile, parked the car, got out of the left side of the car, went around the front of the car, entered through the iron gate, up the stairs of the residence at 2234 North Fremont and entered the residence at 2234 North Fremont.

768 Q. When you say "went up the stairs," you mean the front stairs?

A. Yes, sir.

Q. I will show you this Government's Exhibit 62, and ask you if that picture is the stairs Herbert Haupt went up, if you know?

A. This is a picture of the stairs at 2234 North Fremont, Chicago, Illinois. The stairs that Herbert Haupt walked up to, the residence, at 1 A. M., on the morning of June 25, 1942.

Q. I will show you Government's Exhibit 60, and ask you if you recognize that picture?

A. I do.

Q. What is that?

A. That is a picture of the residence at 2234 North Fremont Street, Chicago, Illinois.

Q. I will show you Government's Exhibit 61. There are several buildings in that picture, and ask you if you recognize that building?

A. Yes, sir; I do.

Q. And describe the building, if you recognize it; will you?

A. The building is a residence at 2234 North Fremont with an iron grating, a front porch, and an iron gate and fence.

Q. Now, did you notice the condition of the lights on the
769 first floor of the building at 2234 North Fremont before Herbert Haupt went into the building?

A. I did.

Q. What was the condition of the light?

A. The place was in total darkness.

Q. Did they continue to remain the same?

A. No, sir.

Q. What happened after Herbert Haupt entered the house, as far as the lights are concerned?

A. After Herbert Haupt entered the house at 2234 North Fremont the lights in the front room of the third floor went on.

Q. Did they remain on?

A. For approximately fifteen minutes.

Q. Then what happened?

A. Then they went out.

Q. At the time that you observed the events on the morning of June 25th, was any other agent present with you?

A. Yes, sir.

Q. Who?

A. Special Agent Elmer Fletcher.

Q. And did you observe the events on the 24th of June regarding Herbert Haupt and the headlights, and was there any agent with you?

A. Yes, sir.

Q. Who?

A. Elmer Fletcher also.

Mr. Woll. That will be all.

770 Cross-examination by Mr. Warnholtz:

Q. Mr. Dunne, when you refer to entering a residence, you mean entering the front door of an apartment building?

A. I refer to the entry of the front door of the building at 2234 Fremont.

Q. Was that a residence or apartment building?

A. A three-story building.

Q. You live in Elmhurst?

A. I do.

Q. They call a residence a one-story building, don't they?
A. I am not too sure of that, sir.
Mr. WARNHOLTZ. That is all. Thank you.
Mr. WOLL. That is all.

JAMES E. CONERTY, called as a witness by the Government, after having been first duly sworn, was examined and testified as follows:

Direct examination by Mrs HURLEY:

Q. State your name, sir.
A. James E. Conerty.
Q. And you are a Special Agent for the Federal Bureau of Investigation?
771 A. I am.
Q. Were you a Special Agent on June 22, 1942?
A. I was.
Q. And on that date, about 9:30 P. M., did you go into the neighborhood of 6361 North Leoti Avenue, or Street?
A. I did.
Q. Who did you go with at that time?
A. At that time, why, I was with Special Agent Schneider.
Q. Were you in a car?
A. I was.
Q. Now, when you arrived at 6361 North Leoti Avenue with Agent Schneider, what, if anything, did you do?
A. At that time we met four other agents who were at that address also, and after we arrived we observed three individuals leaving the address at 6361 North Leoti.
Q. And did you then later learn who those individuals were?
A. Yes; we observed they were Mr. and Mrs. Haupt and Herbert Haupt.
Q. Now, what, if anything, did Mr. and Mrs. Haupt and Herbert Haupt do when you saw them in front of 6361 North Leoti?
A. They entered a Plymouth automobile and drove to the address 7236 North Odell.
772 Q. And did you travel from 6361 North Leoti to 7236 North Odell?
A. I did.
Q. Were you with another agent at that time?
A. I was.
Q. What agent was that?
A. Special Agent John A. Lynch.
Q. With Agent Lynch behind you and Schneider, they left you, did they?
A. After we went north from Odell to the Leoti address, or rather, from the Leoti address to the Odell address.

Q. Now, then, about what time did Hans and Erna Haupt and Herbert Haupt arrive at 7236 North Odell?

A. At approximately 10 P. M.

Q. What did they do when they arrived at that address?

A. They parked their automobile and three of them entered that address.

Q. Do you know now who lived at 7236 North Odell?

A. Mr. and Mrs. Koch.

Q. That is spelled K-o-c-h; is that right?

A. That is right.

Q. How long did Mr. and Mrs. Haupt and Herbert Haupt remain at 7236 North Odell?

A. They remained there until about 10:30. At that time,
773 then, they came out and got into the Plymouth and drove south.

Q. And did they subsequently stop at another address?

A. They stopped at 2234 North Fremont, at that point Mr. Haupt drove the car south on Fremont. Herbert and his mother got out and went into 2234 North Fremont.

Q. Now, when they went into 2234 North Fremont, what entrance did they go into?

A. They went in the front entrance.

Q. I will show you Government's Exhibit 3 and ask you if that is the individual whom you referred to as Herbert Haupt, whom you observed on that evening?

A. Yes, sir.

Q. I will show you Government's Exhibit 60, 61, and 62, and ask you if those are pictures of the building at the address 2234 North Fremont Street?

A. Yes, sir; all three of them.

Q. And they show the steps and entrance to which you have described them as having gone in this evening you are talking about?

A. That is right.

Q. And who was it that went up the steps into that apartment-building?

A. Herbert Haupt and his mother, Mrs. Erna Haupt.

Q. Now, do you remember, did you remain near this address
774 at 2234 North Fremont Street after you observed Herbert Haupt and Mrs. Haupt go into that building?

A. Yes, sir; I did.

Q. And did you observe anything about the lights on the third floor of the apartment at 2234 North Fremont, while you remained at that address?

A. Yes; shortly after Herbert Haupt and Mrs. Haupt entered

that address, the lights in the front of the third floor apartment were extinguished.

Q. About how long after they had gone in, do you recall?

A. About ten minutes.

Q. Now, calling your attention to June 25, 1942, were you in the vicinity of 2234 North Fremont Street?

A. I was.

Q. And where were you with reference to 2234 North Fremont Street?

A. I was across the street at 2231 North Fremont, first floor, front apartment.

Q. And did you from that position have a view of the steps and the door entrance to 2234 North Fremont Street?

A. Yes, sir.

Q. Calling your attention to about 7 o'clock A. M. on that date, did you observe anything with reference to 2234 North Fremont Street?

775 A. At that time I saw Hans Max Haupt, and another unknown individual, leave the address 2234 North Fremont Street, and proceed to the said Plymouth automobile, in which Hans and his wife and his son were riding in on the previous Monday.

Q. Where did Hans Haupt come from at the time this occurred?

A. He came out of the front entrance to 2234 North Fremont.

Q. Now, did you observe anything a little later after 7:10 that morning?

A. At about 7:15 that morning I observed Herbert Haupt come out of the same entrance at 2234 North Fremont and walk to a Pontiac coupe that was parked in front of that address.

Q. Was that a black Pontiac coupe?

A. Yes; it was.

Q. How was Herbert Haupt dressed at that time?

A. At that time he was dressed in a light tan suit with a straw hat and two-tone shoes.

Q. And he entered the car and drove away, is that correct?

A. He entered the car about ten minutes later, Hans Max Haupt, and this other unknown individual, and drove south
776 on Fremont and they were immediately followed by Herbert Haupt in his Pontiac coupe.

Q. Now, did you observe anything about 9 a. m., that same day, June 25th, 1942?

A. At about 9 a. m., I observed Hans Haupt return in the Plymouth automobile and he was alone. He parked the car, entered the address 2234 North Fremont.

Q. That is the front entrance of that apartment, is that correct?

A. That is right.

Q. Did you observe anything about 9:45 that same morning?

A. I observed Hans Max Haupt leave the front entrance 2234 North Fremont, get into the Plymouth automobile and drive south on Fremont.

Q. Did you observe Hans Haupt return at any time then during that day?

A. I observed him return at approximately 12:10 the same day, in the Plymouth automobile, parked the car in front of the entrance, 2234 North Fremont.

Q. Do you see that man whom you observed as Hans Haupt here in the courtroom?

A. I do.

Q. Point him out?

A. The gentleman with the blue suit, dark tie, and moustache.

Mr. HURLEY. Indicating the defendant Hans Max Haupt.

777 Q. Did you see him leaving the residence after he had entered at 12:10?

A. I saw him leave about 1 o'clock that same day, front entrance of the same address.

Q. Now, calling your attention to about 4:20 p. m. on June 25, 1942, did you observe anything with reference to 2234 North Fremont Street, about that time?

A. At about that time I observed Herbert Haupt drive up in a Pontiac and park the car and get out and go to the front entrance of that address.

Q. Did you observe anything with reference to 2234 North Fremont at about 6:45 on June 25th?

A. At about that time I observed Herbert Haupt leave the address 2234 North Fremont by the front entrance, get into a Pontiac coupe and drive south on Fremont.

Q. Did you observe how Herbert Haupt was dressed at that time?

A. At that time he had apparently made a change of clothing, because when he entered at 4:20, he was wearing a light tan suit and when he came out at 6:45 he had a gray-green sweater and cap.

Q. Now, upon entering the car, the Pontiac coupe, what did he do?

778 A. He drove south on Fremont.

Q. Now, calling your attention to June 26, Friday, 1942, at about 5 o'clock in the afternoon, were you in the vicinity of 2234 North Fremont?

A. Yes, sir; I was.

Q. Where were you at the time?

A. I was at 2231 North Fremont, on the first floor apartment, which is directly across the street from 2234 North Fremont.

Q. Was there anyone with you as you remained there on this occasion?

A. At that time, I was alone.

Q. On the previous event that you have testified to, when you were at 2231 North Fremont, was there anyone with you on those occasions?

A. On those occasions I was alone.

Q. Now, calling your attention to about 5 p. m. on June 26, 1942, what, if anything, did you observe with reference to 2234 North Fremont Street?

A. I observed Hans Max Haupt drive up in the Plymouth automobile, park the car and enter the residence 2234 North Fremont by the front entrance.

Q. And subsequent to that time, did you observe anything else with reference to 2234 North Fremont?

779 A. At about 6 o'clock the same day, I observed Herbert Haupt drive up in his Pontiac coupe, park the car at the same address, by the same entrance.

Q. That is the front entrance of 2234 North Fremont, is that correct?

A. That is right.

Q. Did you observe anything with reference to 2234 North Fremont between 7 and 7:30 that evening?

A. At about 7:15 I observed Max Haupt leave the residence by the front entrance; at that time he was alone. He went to his automobile, which was parked; and drove south on Fremont.

Q. Now, calling your attention to about 8 o'clock on June 26, 8 p. m., June 26, 1942, did you observe anything with reference to 2234 North Fremont Street?

A. At about 8 o'clock I observed Herbert Haupt and his mother, Mrs. Erna Haupt, leave the residence by the front entrance, get into the Pontiac coupe and drive south on Fremont Street.

Mr. HURLEY. Cross-examine.

Cross-examination by Mr. WARNHOLTZ:

Q. Mr. Conerty, on June 26, when Hans Haupt left home at about 7:15 in the evening, how was he dressed?

A. I don't know exactly, or recall, how he was dressed.

780 He may have been dressed in a suit, or he may have been dressed in his shirt sleeves. I don't remember.

Mr. WARNHOLTZ. Thank you. That is all.

Mr. HURLEY. That is all. Mr. Schneider.

PETER P. SCHNEIDER, called as a witness on behalf of the Government, after been first duly sworn, was examined and testified as follows:

Direct examination by Mr. HURLEY:

Q. Will you state your name?

A. Peter P. Schneider.

Q. Spell the last name?

A. S-c-h-n-e-i-d-e-r.

Q. You are a Special Agent for the Federal Bureau of Investigation?

A. I am.

Q. And you were during the month of June 1942, is that correct?

A. I was.

Q. Now, calling your attention to June 22, 1942, did you go into the neighborhood of 6361 North Leoti Street, in the city of Chicago?

A. I did.

Q. Whom were you with at that time?

781 A. At that time I was with Special Agent James Conerty.

Q. About what time did you arrive at that address?

A. At approximately 9:30 P. M.

Q. And were there, if you know, other agents at or near that address at the time you arrived?

A. There were other agents in that vicinity at that time.

Q. Now, what, if anything, did you observe with reference to 6361 North Leoti at the time you were there?

A. At approximately 9:30 I observed three individuals leave 6361 North Leoti.

Q. Well, were they men or women?

A. Two of them were men; one was an elderly man and the second was a young man and the third was a woman.

Q. Did you later learn who those three individuals were?

A. I did not.

Q. Did you later learn at any time after that who they were?

A. No.

Q. Well, what, if anything, did you do, after you saw these people come out of 6361 North Leoti?

A. They entered a Plymouth automobile, which was

782 parked in front of 6361 North Leoti, and I followed that automobile.

Q. And who were with you in following that car?

A. At that time I was with Special Agent Richard Axtell.

Q. Did that Plymouth car with those three people stop at any other address?

A. The Plymouth automobile stopped at an address 7236 North Odell Avenue.

Q. And what time did it arrive there?
A. That was approximately 10 o'clock P. M.
Q. And what did these three individuals do upon arriving at 7236 North Odell?
A. The same three individuals left the Plymouth automobile and entered 7236 North Odell.
Q. And how long did they remain in that residence?
A. They remained in that residence until approximately 10:30 P. M.
Q. And when they left the residence, what did they do?
A. They entered the same Plymouth automobile and the car was driven to the vicinity of 2234 North Fremont Street.
Q. When the car arrived at 2234 North Fremont Street, what did the three individuals do?
783 A. The young man and the elderly woman got out of the car and entered the building at 2234 North Plymouth.
Q. What entrance did they go into at that address?
A. The front entrance.
Q. Go up the steps?
A. They did.
Q. Did you observe anything with reference to the light in the third floor apartment at 2234 North Fremont Street, after these two people had gone into that entrance?
A. After they entered the entrance the lights were on on the third floor front and at approximately 11 o'clock they were extinguished.
Q. Now, calling your attention to June 23, 1942; were you in the neighborhood of the Belmont Theater?
A. I was.
Q. About what time was that?
A. This was between the hours of 3:30 and 4:30 P. M.
Q. Was there anyone with you at that time?
A. Yes.
Q. Who was that?
A. There was Special Agent Frank Meech.
Q. And did you observe someone come out of that theater later that afternoon?
A. I did.
784 Q. About what time was that?
A. That was approximately 4:30 P. M.
Q. I will show you Government's Exhibit 3, and ask you whether or not that is the individual you saw come out of the Belmont Theatre at that time?
A. It is.
Q. Now, where did the individual whom you have identified on

Government's Exhibit 3, go after you had seen him come out of the Belmont Theatre?

A. He walked to the vicinity of 2234 North Fremont Street.

Q. At about what time did he arrive at 2234 Fremont?

A. He was in the vicinity of 2234 Fremont at aproximately 5:15 P. M.

Q. And was there any other agent near 2234 North Fremont Street at that time?

A. There were several in the vicinity.

Q. Who were the agents, did you see them when you came up there?

A. Special Agent Dixon, Special Agent Meech, Special Agent Fletcher, and Special Agent Lynch.

Q. Now, did you remain in the vicinity of 2234 North Fremont Street?

A. I did.

785 Q. And calling your attention to about 6:15, did you observe anything with reference to 2234 North Fremont at that time?

A. I was not in the vicinity of 2234 North Fremont at 6:15 P. M.

Q. Well, at any time around that time, were you there?

A. At 6 P. M. I observed Herbert Haupt and Mr. Haupt and Mrs. Haupt leave 2234 North Fremont Street.

Q. And how did they leave?

A. They came out, the front entrance of 2234 North Fremont Street, entered a Plymouth automobile, which was parked in front of the building, then drove to the intersection of Halsted Street and Lincoln Avenue.

Q. Do you know whether or not that Plymouth automobile was the same one you observed June 22, 1942?

A. It was.

Q. What was done after they had driven to the intersection of Halsted Street and Lincoln Avenue?

A. The car was parked on Halsted Street, just south of Lincoln Avenue, and the three persons entered Wagner's Restaurant.

Q. Did you remain near Wagner's Restaurant at that time?

A. I did.

Q. Did you see Hans and Erna Haupt and Herbert

786 Haupt come out of the restaurant?

A. I did.

Q. At about what time?

A. This was approximately 6:45 P. M.

Q. And what did they do when they came out of the restaurant?

A. They separated; that is, the two men entered the Plymouth.

Q. That is Hans and Herbert Haupt?

A. Yes, sir; Hans and Herbert Haupt entered the automobile, and Mrs. Haupt walked off on foot.

Q. Where did Hans and Herbert Haupt go when they entered the automobile?

A. They drove to Warner Motor Sales at 958 Diversey, West Diversey Parkway.

Q. And what did they do when they arrived at 958 West Diversey Parkway?

A. They entered this business establishment.

Q. Did you see them inside of the Warner Motor Sales?

A. No, sir.

Q. How long if you know did they remain at the Warner Motor Sales?

A. They were approximately there until 7:35 P. M.

Q. And they entered there about what time, if you recall?

787 A. Approximately 6:55 P. M.

Q. And what did they do when they came out of the Warner Motor Sales place of business?

A. They again entered their Plymouth automobile and the car was driven to 2234 North Fremont.

Q. Did you follow to that address to 2234 North Fremont?

A. I did.

Q. And what, if anything, did you observe Herbert Haupt and Hans Haupt do when they arrived at 2234 North Fremont?

A. At that time both Herbert Haupt and Mr. Haupt got out of the Plymouth automobile and Mr. Haupt entered the building at 2234 North Fremont.

Q. What entrance did he go into?

A. That was the front entrance.

Q. What did Herbert Haupt do?

A. Herbert Haupt walked out on Fremont to Webster, then eastward direction on Webster to the intersection of Webster and Lincoln Avenues.

Q. Did you observe him after that?

A. Yes, sir.

Q. Where did you see him?

A. I watched him on the intersection of Webster and Lincoln Avenues.

788 Q. And what did he do after he had been at that intersection?

A. He remained at that intersection until approximately 8:25 P. M., and then he walked for a short distance along Webster in a westerly direction; then boarded a streetcar going west on Webster Avenue until he got to the vicinity of Halsted Street.

Q. What did he do then?

A. He left the streetcar, and on Webster Avenue he met Mr. Haupt.

Q. And what did Herbert Haupt and Hans Haupt do when they met at that point?

A. They walked together at the intersection of Webster and Halsted, then went into a small tavern south of Webster Avenue on Halsted Street.

Q. How long did they remain in there?

A. For a very short period of time.

Q. Did you observe where they went from that tavern?

A. From this tavern they returned to 2234 North Fremont.

Q. What, if anything, did you see Hans and Herbert Haupt do after they came up to 2234 North Fremont Street?

A. At that time, both Herbert Haupt and Mr. Haupt entered the building at 2234 North Fremont.

789 Q. When you say "entered the building," what part of the building did they enter?

A. Entered through the front entrance.

Q. And that was about what time, do you recall?

A. Approximately 8:50 P. M.

Q. Did you observe anything with reference to 2234 North Fremont a little later that same evening?

A. I did.

Q. About what time was that?

A. At approximately 10:15 P. M., Herbert Haupt and a young lady left 2234 North Fremont, entered the Plymouth automobile parked in front of that address.

Q. And where did they go from that address?

A. They drove to Tenycke's Inn, located at 3719 North Ashland Avenue.

Q. Did they enter that establishment?

A. They did.

Q. And how long did they remain there?

A. Approximately ten or fifteen minutes.

Q. And did they go to any other address after that, 3719 North Ashland Avenue?

A. They did.

Q. And what was that address?

A. They drove to the 1700 block on Albion Avenue.

790 Q. Was there another agent with you at the time, at this time?

A. Not in the same vehicle with me.

Q. And you went to the 1700 block West Albion, is that correct?

A. Yes, sir.

Q. Now, after driving to the 1700 block on West Albion, did you follow that Plymouth car to any other address?

A. I did.

Q. What address was it?

A. That Plymouth automobile returned to 2234 North Fremont.

Q. What, if anything, happened when the car arrived there?

A. At that time Herbert Haupt entered the front entrance of the building at 2234 North Fremont.

Q. I will show you Government's Exhibits 60, 61, and 62, and ask you if those are correct photographs of the building you have been observing on 2234 North Fremont Street?

A. They are; yes.

Q. And the entrance shown there is the entrance to which you have testified that folks have entered, is that correct?

A. It is.

Mr. HURLEY. Cross-examine.

791 Cross-examination by Mr. WARNHOLTZ:

Q. Mr. Schneider, you stated that Herbert Haupt left on June 23rd, on Tuesday, right? June 23, 1942, on a Tuesday.

A. It was June 23rd.

Q. On a Tuesday of the week, Monday, Tuesday or Wednesday, or what was it?

A. I don't recall what date it was.

Q. June 23rd he left the place on Fremont Street somewhere after 10 o'clock with a young lady, then he went to Albion Street, and later on he returned around 11 o'clock; the time is immaterial right now; what happened to the young lady, did he bring her back?

A. She got out at 1700 West Albion.

Q. Oh, she left him there?

A. Yes, sir.

Q. Earlier the same evening, you observed Herbert Haupt go to the corner of Lincoln Avenue and Webster Avenue; that is correct, is it not?

A. Yes.

Q. Then he stood for ten to twenty minutes or something like that?

A. It was probably about twenty-five minutes.

Q. What was he doing during that time?

792 A. He was standing on the corner.

Was he observing the cars which came up from downtown, as far as you could see it?

A. Evidently he checked his watch, and other times he watched streetcars and he observed various automobiles.

The COURT. Will your cross-examination take some considerable time?

Mr. WARNHOLTZ. No; only a minute or two, your Honor.

Q. Later on, he met his father and he walked over to the streetcar south on Webster, he then stood on the corner and he met his father, is that correct?

A. Yes.

Q. What corner was that, was it Halsted and Webster?

A. It was very close to Halsted and Webster.

Q. What direction did his father come from? Do you know? Do you remember?

A. No.

Q. Well, as far as you remember, was it a prearranged meeting, or did they just happen to meet there?

A. I had no way of knowing.

Q. Well, as far as you could observe it, you didn't know whether his father came from some other direction?

A. No.

793 Q. And then both of them after going into some tavern or something for about five or ten minutes, went home, is that right, to Mr. Haupt's home, to 2234 Fremont Street?

A. Correct.

Q. And that was somewhere around 8:30 or so, about?

A. It is probably close to 8:50.

Q. 8:50?

A. 8:50 p. m.

Q. You didn't see him come out for the next two hours, you didn't see Herbert Haupt leave this place for the next two hours, did you?

A. I saw him leave at 10:15 p. m.

Q. In between 8:15 and 10:15?

A. Correct.

Mr. WARNHOLTZ. Thank you. That is all.

The COURT. We will recess at this time, ladies and gentlemen, until 2 o'clock.

(Thereupon a recess was taken to the afternoon of Thursday, June 1, 1944, at 2:00 p. m.)

* * * * * *

794 In the District Court of the United States for the Northern District of Illinois, Eastern Division, at Chicago

UNITED STATES OF AMERICA

vs.

HANS MAX HAUPT

Before Hon. JOHN P. BARNES, Judge and a Jury

Thursday, June 1, 1944, 2:00 o'clock P. M.

Parties met pursuant to recess.

Counsel present: Mr. J. Albert Woll, United States District Attorney for the Northern District of Illinois, Eastern Division,

at Chicago, and Mr. Earle C. Hurley, and Mr. Richard G. Finn, Assistant United States District Attorneys for the Northern District of Illinois, Eastern Division, at Chicago, appeared for the United States of America; Messrs. Paul A. F. Warnholtz, Frederick J. Bertram, appeared for the Defendant.

* * * * * *

795 The COURT. You may bring in the Jury.

(Thereupon the following proceedings were had in the courtroom in the presence and hearing of the Jury:)

The COURT. Proceed, gentlemen.

ELMER FLETCHER, resumed the stand for further examination, after having been previously sworn, was examined and testified as follows:

Mr. HURLEY. You have been sworn?

The WITNESS. Yes, sir.

Direct examination by Mr. HURLEY:

Q. Your name is what?

A. Elmer R. Fletcher.

Q. And you are a Special Agent for the Federal Bureau of Investigation?

A. Yes, sir.

Q. And were you a Special Agent on the 23rd day of June, 1942?

A. Yes; I was.

Q. And on that day did you have occasion to go to the vicinity of 2234 North Fremont Street?

A. Yes; I did.

Q. And whom did you go there with?

796 A. Agent John Lynch.

Q. And you went there in a car, did you?

A. Yes, sir.

Q. Now, where did you park with reference to 2234 North Fremont?

A. We parked at the corner of Belden and Fremont, which is directly north.

Q. And from that point, could you see the front entrance to 2234 North Fremont Street?

A. Yes, I could.

Q. Now, about 12:20 p. m., on that day, did you observe anything with reference to 2234 North Fremont?

A. Yes, sir; I did.

Q. Tell us what you saw at that time?

A. I saw Herbert Haupt and Mrs. Erna Haupt come from that address.

Q. That is, from the entrance of 2234 North Fremont Street?
A. Yes, sir.
Q. And that was the front entrance, was it not?
A. Yes, sir.
Q. And that is an apartment building, is it not, Mr. Fletcher?
A. It is a three-story building.
797 Q. Now, what, if anything, did Herbert Haupt and Erna Haupt do when they come out of the building at that time?
A. After they got on the sidewalk, they turned south on Fremont, proceeded south.
Q. Where did Herbert Haupt go, if you observed?
A. Herbert Haupt was with Mrs. Haupt at that time.
Q. Where did they go?
A. After they reached the corner of Fremont and Webster, they turned west, and they proceeded west on Webster to the elevated station, which is approximately one block and a half west.
Q. Where did they go from there?
A. At that point Herbert Haupt went west on Webster to Sheffield, then north on Sheffield until he reached Fullerton Avenue, then turned east on Fullerton Avenue until he reached Lincoln Avenue, then north and west from that point.
Q. Did he go into any particular building, or address?
A. Yes; he proceeded to a cafe, which is located near the Belmont Theatre on Belmont Avenue, approximately in the 1300 block.
Q. Was he on foot or in a car?
A. He was on foot at that time.
Q. Now, did he go into this cafe you speak of?
A. Yes; he did.
798 Q. How long did he remain there?
A. Oh, approximately forty-five minutes.
Q. Did you observe him come out that day?
A. Yes; I did.
Q. Where did he go then?
A. He went in Weiboldt's Store, which is approximately one block north of Ashland and Belmont Avenue.
Q. Did he eventually go to the Belmont Theater?
A. Yes; he did.
Q. About what time did he go in there?
A. Approximately 1:50.
Q. And did you see Herbert Haupt come out of the Belmont Theater?
A. Yes; I did.
Q. Where did he go from there?

A. He proceeded in the vicinity of his home, 2234 North Fremont.

Q. Now, calling your attention to June 24, 1942, were you in the vicinity of 2234 North Fremont on that day?

A. Yes; I was.

Q. Were you with someone else?

A. At what particular time do you have reference to?

Q. Around 12 noon on that day.

A. Yes; I was with Agent James Berg.

799 Q. And did you observe anything while you were in that neighborhood about one o'clock, 1 P. M.?

A. Oh, nothing; no.

Q. Now, did you remain in that neighborhood?

A. Yes; I did.

Q. During that same day?

A. Yes; I did.

Q. Did you observe anything about 8 P. M. on that date?

A. About 8 P. M.?

Q. Yes.

A. No; I didn't.

Q. How long did you remain in the vicinity of 2234 North Fremont?

A. Until approximately 1 o'clock the following morning.

Q. Now, on June 25th, 1942, were you in the neighborhood of 2234 North Fremont Street?

A. Yes; I was.

Q. Was there anyone with you at that time?

A. At what particular time?

Q. At about 1 A. M.?

A. Yes; Agent P. C. Dunne.

Q. And did you observe anything at that time?

A. Yes; I did.

Q. What did you see?

A. I observed Herbert Haupt drive up in front of the
800 address, 2234 North Fremont Street, and enter this address.

Q. What color car was he driving at that time?

A. Driving a black car.

Q. About what time was it that he entered 2234 North Fremont?

A. Approximately 1 A. M.

Q. Did you see him go up the steps, front entrance?

A. Yes; I did.

Q. At 2234; is that correct?

A. Yes; I did.

Q. And now were you in that same neighborhood about 8 A. M. that same day?

A. No; I wasn't.

Q. Were you there at any time during that day other than what you have told us about on June 25th?

A. June 25th?

Q. Yes.

A. Yes; I was there approximately at 4:20 P. M. in the afternoon.

Q. And did you observe anything at that time?

A. Yes; I did.

Q. And what was that?

A. I observed Herbert Haupt enter the residence 2234 North Fremont.

Q. What entrance was that?

A. That was the front entrance.

801 Q. Was there anyone with you at that time?

A. Yes; Special Agent Frank Meech.

Q. Did you observe him later during that day?

A. Yes; I did.

Q. Where was that?

A. That was en route from the address, 629 Webster, to Des Plaines, Illinois.

Q. And about what time did you see him go from 629 Webster to Des Plaines?

A. It was approximately 8:30.

Q. In the evening?

A. Yes, sir.

Q. How long did he remain in Des Plaines?

A. Approximately thirty minutes.

Q. Was there anyone with him at that time?

A. Yes.

Q. How many persons were with him?

A. Four persons.

Q. Men or women?

A. There were three women and one man.

Q. Do you know what address they stopped at in Des Plaines?

A. I know the street, I don't know the house number, it was on Hawthorne Lane.

Q. Did you at any time learn who lived at that place they stopped?

A. No; I did not.

Q. Where did Herbert Haupt go after he left Des Plaines,

802 Illinois?

A. He returned to 629 Webster.

Q. Did you observe where he went from there?

A. No; I did not.

Q. Now, calling your attention to Friday, June 26, 1942, were

you during that day at or near a storage garage on Dearborn Street, north of Lake Street?

A. Yes; I was.

Q. About what time were you there?

A. Approximately 11:45.

Q. Did you observe anything at that time and place?

A. Yes; I did.

Q. And what did you observe?

A. I observed Herbert Haupt and another person enter a car near the storage garage and drive away.

Q. Had you seen that car before?

A. Yes; I had.

Q. Where had you seen it?

A. In front of the address, 2234 North Fremont.

Q. Had you seen Herbert Haupt in the car before?

A. Yes; I did.

Q. Do you know what kind of a car it was?

A. It was a Pontiac car.

Q. Where did that car go from there, if you know?

A. They proceeded from that point to the Outer Drive, and after that, at that particular time, I cannot say.

803 Q. In which direction did they go on the Outer Drive?

A. South.

Q. About 8 P. M. on that day, were you in the neighborhood of 500 West North Avenue?

A. Yes; I was.

Q. And what is located there, if you know?

A. Blue Danube Cafe.

Q. Now, calling your attention to about 9:45 P. M. on June 26, 1942, near the Blue Danube Cafe, did you observe anything at that time and place?

A. Yes; I did.

Q. What did you observe?

A. I observed Herbert Haupt come out of this Cafe and enter his car.

Q. Was there anyone with him?

A. Yes; two other persons.

Q. Men or women?

A. Men.

Q. Where did they go from the Blue Danube Cafe?

A. To the Allerton Hotel.

Q. And did you see Herbert Haupt go to the Allerton Hotel?

A. No; I did not.

Q. Where did they park the car, if they did park it?

A. They parked the car in a parking lot just east 804 of the hotel.

Q. After getting out of the car, what did they do?
A. They proceeded to the Allerton Hotel.
Q. Did you see Herbert Haupt leave the Allerton Hotel?
A. Yes; I did.
Q. At about what time?
A. That was approximately 11:45.
Q. Where did he go from there?
A. To the Vine Gardens, which is also on North Avenue.
Q. Was that the same Pontiac car he had gone down there in?
A. Yes, sir.
Q. And did he enter the Vine Gardens?
A. Yes; he did.
Q. Was there anyone with him at that time?
A. He had two persons that I saw went into the Allerton Hotel.
Q. Do you know who those two men were?
A. To my own knowledge, I do not.
Q. How long did he remain in the Vine Gardens?
A. Until approximately 1:40 A. M. the following morning.
Q. Did you see him come out of the Vine Gardens?
A. Yes; I did.
805 Q. What did he do when he came out?
A. He proceeded to the address 2234 North Fremont.
Q. In this same black Pontiac car he arrived in?
A. Yes, sir.
Q. At 2234 North Fremont Avenue, what, if anything, did he do?
A. He entered this address.
Q. He entered the front entrance at 2234 North Fremont, is that what you say?
A. Yes sir.
Q. Now calling your attention to about 8:20 A. M., Saturday, June 27th, were you in the vicinity of 2234 North Fremont?
A. Yes; I was.
Q. Was there anyone with you?
A. Yes.
Q. Who was that?
A. Special Agent Fred F. Meech.
Q. Did you observe anything with reference to 2234 North Fremont Street?
A. Yes, I did.
Q. At about what time?
A. That was approximately 9 o'clock A. M.
Q. What did you observe at that time?
A. I observed Herbert Haupt come from this residence, enter his car and proceed south on Fremont Street.
806 Q. And he was apprehended shortly after that time, is that right?

A. Yes, sir.

Q. I will show you Government's Exhibit 3, and ask you if that is a photograph of Herbert Haupt you have referred to in your testimony?

A. Yes; it is.

Q. I will show you Government's Exhibit 60 and Government's Exhibits 61 and 62, and ask you whether or not those are photographs of the building at 2234 North Fremont Street you have spoken of?

A. Yes; they are.

Q. And the steps shown on Government's Exhibits 60 and 62, leading up to 2234 are the steps you referred to in your testimony that Herbert went up to enter that building, is that correct?

A. Yes, sir.

Mr. HURLEY. Cross-examine.

Cross-examination by Mr. WARNHOLTZ:

Q. Mr. Fletcher, do you know what is located at 629 Webster Avenue, is that a tavern, or what is it?

A. It is a building located at that address.

Q. Is it a tavern in the building; what type of building is this, what purpose is it?

807 A. At that particular time, I believe there was a confectionery at that address.

Q. And that is where he went into, as far as you know?

The WITNESS. Will you repeat that question?

Q. That is where he went into, as far as you know, into this confectionery store?

A. To the address, 629 Webster.

Mr. WARNHOLTZ. Thank you. That is all.

Mr. HURLEY. That is all.

Mr. Meech.

FRANK F. MEECH, called as a witness by the Government, after having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. HURLEY:

Q. What is your name?

A. Frank F. Meech.

Q. You have been previously sworn in this case, haven't you?

A. That is right.

Q. You are a Special Agent for the Federal Bureau of Investigation?

A. I am.

808 Q. And you were a Special Agent with that Bureau on June 23, 1942; is that correct?

A. I was.

Q. Calling your attention to June 23, 1942, were you in the neighborhood of 2234 North Fremont Street, about 12:15 on that date?

A. I was.

Q. Whom were you with at that time?

A. At that time I was with former Special Agent Dixon.

Q. Did you observe anything with reference to 2234 North Fremont?

A. Yes.

Q. What did you see with reference to that address at that time?

A. At approximately 12:15 I saw Erna Haupt and Herbert Haupt emerge from the residence at 2234 North Fremont and walk south on Webster Avenue.

Q. I will show you Government's Exhibit 3, and ask you if this picture is a picture of the individual whom you refer to as Herbert Haupt?

A. That is a photograph of Herbert Haupt.

Q. That is the same individual you saw come out of 2234 North Fremont on the date you testified to?

A. That is correct.

809 Q. Now, after Herbert Haupt and Erna Haupt came out of that address—by the way, withdraw that.

What entrance did they come out of on that day, Mr. Meech?

A. I saw them emerge from the porch of the residence 2234. I didn't actually see them come out of the doorway.

Q. On the steps leading up to the doorway there?

A. That is correct.

Q. As part of the entrance, is that correct?

A. That is correct.

Q. What did they do after they come out onto the street?

A. They come out on Webster and Fremont and turned west on Webster to the elevated station where they separated. Erna Haupt went up on the railroad station and came downtown, and I followed Erna Haupt, downtown section of Chicago.

Q. Now, at about 4:30 on that same day, were you in the neighborhood of the Belmont Theatre?

A. I was.

Q. Were there any other agents in that same group?

A. Yes.

Q. Can you tell us who some of them were?

A. Special Agent E. R. Fletcher, Special Agent John

810 Lynch, Special Agent Schneider, Former Special Agent E. C. Dixon.

Q. Did you observe Herbert Haupt in that vicinity while you were there?

A. Yes; I did.

Q. About what time did you see him?

A. At about 4:30 in the afternoon I saw him emerge from the Belmont Theatre.

Q. Where did he go from the Belmont Theatre?

A. From the Belmont Theatre he walked to his residence 2234 North Fremont.

Q. Did you observe him do anything when he come to that address?

A. Yes. He entered the residence at 2234 North Fremont.

Q. What entrance did he go in at that time?

A. At that time I observed him go in through the gate. There is an iron fence on the front of the residence, walk up the walk, up the stairs onto the porch, and that is far as I could see him.

Q. That is the front entrance to that building, is it not?

A. That is right.

Q. Now, about 6 p. m. that same date, did you observe anything with reference to 2234 North Fremont?

A. Yes. At approximately 6 p. m., I observed
811 Erna Haupt and Hans Haupt and Herbert Haupt emerge from the residence 2234 North Fremont.

Q. When you say "emerge from the residence," what entrance did they come from?

A. That I would call that apparently the front entrance. I saw them come off the porch on the steps out on the sidewalk and enter a Plymouth automobile.

Q. After entering the car, what did these three people do?

A. They drove from there to Wagner's Restaurant on North Halsted Street and Lincoln Avenue.

Q. And did you observe them do anything in this restaurant?

A. Yes; I maintained a surveillance with the other agents continuously at that time. They entered the Wagner's Restaurant and emerged some time after, and drove to the Warner Motor Sales at Sheffield and Diversey Parkway.

Q. Do you know whether they ate in the restaurant?

A. Yes; they did. I walked past the restaurant and observed them eating dinner in the restaurant.

Q. Now, what time did these three people come out of the restaurant?

A. At approximately 6:45.

Q. And what did they do after coming out of the
812 restaurant?

A. After they emerged from the restaurant, I stood near the automobile just a few moments and Erna Haupt departed and Hans Max Haupt and Herbert Haupt walked away and Hans

Max Haupt and Herbert Haupt entered the Plymouth automobile and drove to the Warner Motor Sales.

Q. Do you see the person Hans Max Haupt in the courtroom?

A. Yes; I do.

Q. Point him out.

A. The man sitting at the far table.

Mr. HURLEY. Indicating the defendant Hans Haupt.

Q. Do you know where the Warner Motor Sales is located?

A. Located on the corner of Diversey Parkway and Sheffield Avenue.

Q. Did you see Herbert Haupt and Hans Haupt inside the Warner Motor Sales?

A. I did not see them inside.

Q. How long did they remain there?

A. They remained there approximately thirty-five or forty minutes.

Q. Did you see them come out of the Warner Motor Sales?

813 A. Yes; I saw them emerge at approximately 7:35.

Q. What did they do when they came out of the Warner Motor Sales?

A. They entered their Plymouth automobile and drove to 2234 North Fremont.

Q. And what did Hans Haupt and Herbert Haupt do when they arrived at that address?

A. At that time I observed Hans Max Haupt walk up the steps onto the porch of the residence at 2234 North Fremont, and Herbert Haupt continued on walking to the corner of Webster and Lincoln Avenues.

Q. Did you observe Herbert Haupt at the corner of Webster and Lincoln?

A. Yes, I did.

Q. How long did he remain there?

A. He remained there approximately twenty minutes.

Q. Where did he go from Webster and Lincoln?

A. When he left the corner of Webster and Lincoln, he walked west on Webster and caught a streetcar and rode the streetcar to approximately one block west of Halsted Street where he alighted and continued walking west on Webster.

Q. Did you observe anything else?

A. Yes.

Q. What?

A. Shortly after he alighted from the streetcar, he

814 continued walking west and he met Hans Max Haupt walking toward him. They stopped for a moment together and then Herbert retraced his steps with Hans Max Haupt and they went into a tavern located on Webster Avenue.

Q. How long did they remain in the tavern?

A. They remained in the tavern a few minutes when they emerged and walked to the residence, 2234 North Fremont, together.

Q. Did you see them go into 2234 North Fremont?

A. I saw them go up the steps onto the porch of the residence, 2234 North Fremont.

Q. That is the front entrance and then onto the steps?

A. That is correct.

Q. About what time was that?

A. That was approximately 8:55.

Q. Did you remain at or near 2234 North Fremont after that?

A. Yes; I did. I remained in that neighborhood.

Q. Calling your attention to about 10:15 p. m. that same day, did you observe anything with reference to that address?

A. Yes; at approximately 10:15 I observed Herbert Haupt and a woman emerge from the residence at 2234 North
815 Fremont and enter a Plymouth automobile.

Q. Did they drive away from 2234 North Fremont at that time?

A. Yes; they did.

Q. Now, calling your attention to June 24th, 1942, were you in the neighborhood of 2234 North Fremont about 7 o'clock in the morning of that day?

A. Yes.

Q. Did you observe anything with reference to 2234 North Fremont?

A. Yes; at approximately 7:05 in the morning, Hans Max Haupt emerged from the residence 2234 North Fremont, entered a Plymouth automobile parked in front on the street.

Q. When you say "emerged," he come out of that front entrance and down the steps?

A. I saw him come off the porch down the steps, at that address.

Q. And were you in the same neighborhood about 1 p. m. of that day?

A. Yes; I was.

Q. Did you observe anything with reference to 2234 at that time?

A. At approximately 1 o'clock in the afternoon Herbert Haupt emerged from the address 2234 North Fremont and
816 entered. After waiting on the sidewalk for a few minutes, he entered a green checkered cab that drew up in front of this address.

Q. Did you follow the cab?

A. Yes; we did.

Q. Where did it go?

A. The cab went to the corner of State and Lake Streets, where Herbert Haupt alighted from the taxicab.

Q. When you say you saw him emerge from that address on that date, what did you see with reference to where he came out of?

A. I saw him come off the front porch of the front of this address, down the steps out to the front of the house.

Q. Now, calling your attention to Thursday, June 25, 1942, were you in the neighborhood of 2234 North Fremont?

A. Yes; I was.

Q. Was there anyone else with you at that time?

A. Yes; at that time Special Agent E. R. Fletcher was with me.

Q. Did you observe anything with reference to that address?

A. Yes; at approximately 4:20 in the afternoon Herbert
817 Haupt drove up in the Pontiac car, it is the address, 2234 North Fremont Street.

Q. Did he go up the steps?

A. He went up the steps onto the porch where he disappeared.

Q. Now, calling your attention to Friday, June 26, 1942, were you in the neighborhood of 2234 North Fremont Street, about 6 p. m.?

A. Yes; I was.

Q. Did you observe anything with reference to that address at that time?

A. Yes; at approximately 6 o'clock, I observed Herbert Haupt drive up in front of the residence 2234 North Fremont and enter this address.

Q. At 6 P. M.

A. Yes; at approximately 6 p. m.

Q. Went up the steps and entered the front entrance?

A. That is correct, he went up the steps and entered onto the porch.

Q. Now, calling your attention to Saturday, June 27th, 1942, at approximately 1:50 A. M., were you in the neighborhood of 2234 North Fremont at that time?

A. Yes; I was.

Q. Were you in company with anyone else?

A. Yes; I was associated with Agent P. V. Robe at that time.

818 Q. Did you observe anything with reference to 2234 North Fremont at that time and place?

A. I observed Herbert Haupt drive up in front of 2234 North Fremont, at this address at that time.

Q. By entering the address, did you see him go up on the steps of the porch?

A. That is correct, go up on the steps of the porch; yes.

Q. Now, calling your attention to about 9:05 A. M., on that

same date, the 27th, were you in the neighborhood of 2234 North Fremont?

A. Yes; I was.

Q. Did you observe anything at that time?

A. Yes.

Q. What was it?

A. Well, approximately 9:05 I saw Herbert Haupt come off the porch at the address 2234 North Fremont, come down the steps out to a Pontiac automobile which he entered and drove south on Fremont Street.

Q. Was that the same Pontiac car you seen him in before?

A. That is the same automobile; yes, sir.

Q. And he was apprehended shortly thereafter, was he not?

A. That is correct.

819 Mr. HURLEY. Cross-examine.

Cross-examination by Mr. WARNHOLTZ:

Q. Mr. Meech, referring you to June 23rd on that day, you observed Herbert Haupt at the corner of Lincoln Avenue and Webster, standing there for about twenty minutes, is that correct?

A. That is correct; sir.

Q. At that time, what was he doing there, while he was standing at the corner?

A. He was just pacing up and down on the corner. He wasn't doing anything but pacing.

Q. Did you notice whether he was observing streetcars stopping at that inter-section?

A. I couldn't tell whether he was observing streetcars or automobiles.

Q. Now, after that he went west, he boarded a streetcar, a Webster Avenue streetcar and went west to about Halsted Street, correct, when he got off the car?

A. Approximately one block west of Halsted Street.

Q. About one block west of Halsted Street; is that Fremont?

A. No, sir.

Q. About how far farther west is Fremont?

820 A. Fremont is approximately two blocks from there, farther west.

Q. His father was then coming from the west going east there that minute, at that time his father was coming, walking east?

A. That is correct.

Q. Just a happened meeting?

A. That is correct.

Q. Now, referring to the 24th of June when you saw Herbert Haupt at the corner of Lake Street and State Street, downtown Chicago, what did Herbert Haupt do immediately after getting off the checker taxicab?

A. He entered a drugstore located on the corner of State and Lake Streets.

Q. Did you see him later going to the State-Lake Show?

A. No; I did not.

Q. Or any other theatres downtown?

A. No; I did not.

Mr. WARNHOLTZ. Thank you, That is all.

Mr. HURLEY. That is all.

821 MARVIN W. LEWIS, called as a witness by the Government, after having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. WOLL:

Q. What is your name?

A. Marvin W. Lewis.

Q. Is Lewis spelled L-e-w-i-s?

A. That is right.

Q. You are a Special Agent for the Federal Bureau of Investigation, are you?

A. Yes; I am.

Q. Calling your attention to about 10 o'clock on June 23rd, 1943, did you with Special Agent George O'Connor arrive in the vicinity of 2234 North Fremont Street in an automobile then occupied by Agents Lynch and Dixon?

A. Yes; I did.

Q. That was in the evening, about 10 o'clock?

A. 10 P. M.; yes, sir.

Q. Did you remain in the automobile for some short time?

A. Yes, sir; I did.

Q. Now, did you observe anything in the vicinity of 2234 North Fremont Street approximately at that——

822 A. Approximately 10:15 P. M., Agent Lynch, who was out in front, sitting in front seat of the car by the driver's wheel.

Q. Tell me what you observed, if you will?

A. Yes, sir; I observed an automobile coming south on Fremont Street toward Webster Avenue. I observed that this car turned right at the corner. I observed two people in the car, one of them was a young man, the other a young lady, and the car turned to the right and went west on Webster.

Q. Did you follow that car?

A. Yes; we did.

Q. Where did the car go?

A. It went to the Tenycke Inn, located at 3719 North Ashland Avenue.

Q. What happened then?

A. The car pulled over to the curb somewhat directly in front of that address and the man and girl who were in that car got out of the car and went into the Inn.

Q. Now, did you remain in your automobile?

A. No, sir; I did not.

Q. What did you do?

A. I got out of the automobile and walked up to 3719 and looked into the Inn.

Q. Did you see two people come in?

823 A. Yes, I did. I saw a man and the girl, they were sitting at the bar.

Q. I will show you Government's Exhibit 3 and ask you if this is the man you saw in the Tenycke with the girl?

A. Yes; that is the man I saw.

Q. Now, did you later see this man and woman you identify in the picture, from which you identified as Herbert Haupt, leave the Tenycke Tavern?

A. Yes; they arrived at about 10:35 and fifteen minutes later about 10:50 P. M., Herbert Haupt and the young lady got into the car and drove north.

Q. Did you subsequently see the young lady leave the car?

A. Yes; I did.

Q. About what time and where was that?

A. That was about 12:05 A. M., which would be the morning of June the 24th, and it was in the 1700 block West Albion Street.

Q. After the young lady left the car, did you continue to follow the car in which Herbert Haupt was in?

A. Yes; we did.

Q. Where did that car go?

A. It went to 2234 North Fremont Street.

Q. Then what happened?

824 A. Herbert Haupt got out of the car and entered that particular address.

Q. When he entered it, how did he enter the address?

A. He went through the iron gate, which was at the very entrance to the property and up on the porch, in through the front door.

Q. I will show you Government's Exhibits 60, 61 and 62, and ask you if these pictures represent the house into which Herbert Haupt went?

A. Yes, sir; they do.

Q. And is Government's Exhibit 62 a picture of the steps up which Herbert Haupt went?

A. Yes, it is.

Q. Where Herbert Haupt entered the house, did you notice the condition of the lights on the third floor apartment?

A. Yes, I did. At the time the automobile was parked in front of 2234, there were no lights on the third floor, and a few minutes after Herbert Haupt entered that particular building, lights did appear on the third floor. After about five or possibly ten minutes, those lights went out. Those lights are in the front of the house on the third floor.

Q. Now, about what time did the lights go out?

A. I would say about 12:40 A. M.

825 Q. About how long did you remain and observe that house after that?

A. Until 6 A. M.

Q. Now calling your attention to June 25th, 1942, did you again that evening observe Herbert Haupt?

A. Yes, I did.

Q. Approximately what time?

A. Approximately 12, midnight.

Q. Where did you observe him?

A. I observed him driving his automobile, a Pontiac automobile which he parked about two houses north on 2234 on the west side of the street. I saw him get out of the car at that time, and walk over to the same gate, and enter the building, 2234.

Q. And when you say entered the building, you mean by the front steps?

A. He went up the front steps through the front door.

Q. And did you again notice the condition of the lights before he went into the place, after he arrived?

A. Yes, I did. Before he went in the house, the lights on the third floor were out. A few minutes after he entered, the lights were on. After about ten minutes, the lights were out.

826 Q. Now, how long did you remain in the neighborhood of 2234 North Fremont Street that particular evening?

A. I remained there all night until about 9:30 A. M. of the morning of the 26th.

Q. Now, that morning of the 26th, while you were still observing the house, did you again see Herbert Haupt?

A. Yes, I did.

Q. What time did you see him?

A. It was 9 o'clock A. M.

Q. Did you particulary notice the clothes he was wearing when he went there the evening before?

A. Yes; when he went the evening before—that is, on the 25th—at midnight he wore a green sweater, tan gabardine trousers and a pair of brown and white shoes, white and green colored Panama hat with the rim turned down.

Q. Do you recall how he was dressed when he came out from 2234 on the morning of June the 26th

A. Yes; I do. He was wearing a tan gabardine suit—that is; a coat and jacket—with a pair of brown and white shoes.

Q. Now, did you have an opportunity to observe the Pontiac automobile which you say he was driving?

A. Yes; I did.

827 Q. Can you describe the color of the wheels?

A. Yes; the wheels were red, the car itself was black.

Q. Now, you state that at about 9 o'clock in the morning June 26th, that you saw Herbert Haupt leave 2234 North Fremont?

A. I saw him leave that particular address; yes, sir.

Q. Was anyone with you at that time?

A. Yes; Agent George O'Connor and Jim Hynes were with me at the time.

Q. Now, at any time did he stop after he left?

A. I observed him walk over to where he had parked this Pontiac automobile the night before, about midnight, when I definitely ascertained he intended to use that car. I went up and made a telephone call to my other agents, advising them of that fact.

Q. Then did you go off duty?

A. No, sir; I stayed until Agents O'Connor and Hynes left the building at that time.

Q. You stayed at the building?

A. I stayed there until I was relieved; yes, sir.

Q. Now, did you later return to that particular building, 2231 North Fremont?

A. Yes, I did, at approximately 8 P. M. of June the 26th.

828 Q. That is the same day—the night of the same day?

A. The same day; yes, sir.

Q. Did you see Herbert Haupt at any time that evening or early morning hour of the next day?

A. Yes, I did. At 1:50 A. M., the same Pontiac automobile was parked directly in front of 2234, and I saw Herbert Haupt get out of that automobile, and enter the building at 2234.

Q. And how did he enter the building?

A. The same way he entered on the previous night. He entered directly through the front door—up the porch, into the front door.

Q. Did you again observe the condition of the lights on the third floor?

A. Yes.

Q. What was that?

A. The lights were out at the time he entered the building; they came on in a few minutes after he entered the building, and they

remained on for approximately ten minutes, at which time they were put out.

Q. Did you have an opportunity to observe what clothes he was wearing on that occasion?

A. Yes. At the time he came in he was still wearing the suit, that is, the coat and pants of the same color, and gabardine.

829 Q. The same clothes he wore that morning when he left?

A. That is correct.

Q. This was approximately 1:50, you say?

A. 1:50 A. M.; yes, sir.

Q. Now, calling your attention to 9 o'clock of the morning of the same day, did you again see Herbert Haupt?

A. Yes; I did.

Q. Where did you see him?

A. I saw him—he came out of the front door of the building, 2234 North Fremont Street.

829 Q. What did he do on that occasion?

A. He got into the same Pontiac automobile and drove south on Fremont Street.

Q. Did you have any opportunity to observe how he was dressed at that time?

A. Yes, I did.

Q. How was he dressed?

A. He was wearing a green sweater and tan gabardine trousers and brown and white shoes.

Q. Now, going back to June 26, 1942, did you see anyone enter that home on that day you recognize other than Herbert Haupt?

A. Yes; I did. At 11:00 P. M. I observed Hans Haupt enter that house.

Q. Do you see Hans Haupt in the courtroom?

A. Yes; I do.

Q. Will you point him out, please?

A. The man with the dark suit next to the marshal there is Hans Haupt.

Mr. Woll. For the purpose of the record, identifying the defendant Hans Haupt. Cross-examine.

Mr. Warnholtz. No cross-examination.

(No cross-examination. Witness excused.)

830 James F. Hynes, called as a witness, after having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Woll:

Q. State your name, please.

A. James F. Hynes.

Q. H-y-n-e-s?

A. That is correct.

Q. You are a Special Agent for the Federal Bureau of Investigation?

A. Yes, sir.

Q. Calling your attention to June 26, 1942, approximately at 12:15 in the morning, did you with Agent George O'Connor go down to 2234 North Fremont Street and remain there for some time?

A. Yes, sir.

Q. Still calling your attention to that morning of June 26th, did you at any time notice anyone come out of 2234 North Fremont Street?

A. Yes, sir.

Q. At about what time?

A. At about 9:00 A. M., June 26th, I observed Herbert Haupt on the stoop of 2234 North Fremont, come out onto the sidewalk.

831 Q. When you say "stoop" you mean what?

A. The porch.

Q. You say he entered an automobile?

A. He came out to where the automobile was parked, onto the street.

Q. What kind of an automobile was that?

A. A Pontiac coupe.

Q. How did you remain in the building?

A. No, sir; when he left I left.

Q. You saw the automobile drive away?

A. Yes, sir.

Q. Then you followed that automobile?

A. Yes, sir.

Q. Who followed with you?

A. George O'Connor and myself in one car and Agents Handley and Axtell in the other car.

Q. Where did that car go?

A. Went to 6250 North Wayne Avenue.

Q. Do you know who lived at 6250 North Wayne Avenue?

A. No, sir.

Q. I will show you Government's Exhibit 3 and ask you if this correctly represents the person you saw on that day?

A. Yes; it does.

832 Mr. Woll. Cross-examine.

Mr. Warnholtz. No cross-examination.

Mr. Woll. That will be all.

(No cross-examination. Witness excused.)

GEORGE D. O'CONNOR, called as a witness by the Government, after having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. WOLL:

Q. What is your name?
A. George D. O'Connor.
Q. Is that spelled O'C-o-n-n-o-r?
A. Correct.
Q. Calling your attention to June 25, 1942, were you and Special Agent Axtell near 629 Webster Street?
A. Yes; we were.
Q. At approximately what time was that?
A. We arrived there at 10:00 P. M. in the evening.
Q. Do you know Herbert Haupt?
A. Yes; I do.
Q. That evening did you see Herbert Haupt?
A. Yes; he arrived there at approximately 11:30.
Q. How did he arrive there?
833 A. He came up in a Hudson automobile, got out and went in the building numbered 629 Webster.
Q. Was there anyone with him?
A. Yes; there was.
Q. Who was with him?
A. William Wernecke.
Q. Now, did he later leave the building at 629 Webster?
A. After a few minutes he left; yes.
Q. Where did he then go?
A. He got into an automobile, drove to 2234 North Fremont, where he got out of the car and went into the building at that address.
Q. I said where did he go, I meant Herbert Haupt?
A. That was the one I was speaking of.
Q. He went into 2234 North Fremont?
A. Yes; he did.
Q. Approximately what time was that?
A. It was about midnight of the evening of June 25, 1942.
Q. Now after he went into the building—where did you go after Herbert Haupt went into the building?
A. I went over to the "L" station on Webster Street and after remaining there for a few minutes, Agent Hynes and I went
834 to the building at 2231 North Fremont.
Q. That is across the street from 2234?
A. Yes, sir; that is on the east side of the street.
Q. By the way, did you notice Herbert Haupt enter 2234 North Fremont Street—did you notice the condition of the lights on the third floor?

A. Yes; the lights were on.
Q. The lights were on?
A. Yes, sir.
Q. Did you see the condition of the lights before he went in?
A. Yes; I think they were on, if I remember.
Q. Now, did you notice the condition of the lights shortly after Herbert Haupt entered the building?
A. Agent Axtell and I remained there for a few minutes until the lights were out.
Q. Now, you say the lights went out—you refer to the lights where?
A. On the third floor of the building, 2234 North Fremont.
Q. Now, did you remain in the building at 2231 North Fremont Street that evening and the early morning?
A. Yes, I remained there until about nine o'clock that morning.
835 Q. While you were there at 2231 North Fremont, did you notice anyone coming out of the building at 2234 North Fremont?
A. Yes, that morning at seven o'clock approximately I saw Hans Haupt come out of the building.
Q. Did you recognize Hans Haupt—strike that.
Do you recognize Hans Haupt in the courtroom?
A. Yes; I do.
Q. Will you point him out?
A. The man with the blue shirt sitting over at the other table.
Mr. WOLL. Let the record show the witness identifies Hans Haupt.
Q. Now, you say that was about seven o'clock?
A. Yes; approximately seven o'clock on June 26th.
Q. Now, did you continue to observe 2234 North Fremont Street?
A. Yes.
Q. Did you later see Herbert Haupt?
A. Yes; he came out about nine o'clock.
Q. Came out of where?
A. Out of the building at 2234 North Fremont.
Q. What part of the building did he come out of? Front or back?
A. He came out the front door, came down the steps.
836 Q. Now, calling your attention to June 24, 1942, at approximately 11:55 P. M. did you see Herbert Haupt at the Vine Gardens?
A. It was later than that that evening.
Q. At about 12:55?
A. I beg your pardon? I thought you said 11:55.

Q. I did say 11:55, but you said later.
A. At about 12:45 on that date, the morning of June 25th.
Q. Did you see Herbert Haupt leave the Vine Gardens?
A. Yes; I did.
Q. At the time he left was he accompanied by anyone?
A. No; he was alone at that time.
Mr. WOLL. Cross-examine.

Cross-examination by Mr. WARNHOLTZ:

Q. Mr. Hynes, you state you saw Herbert Haupt at 629 Webster in a Hudson car?
A. Yes; he got out of a Hudson car in front of that address.
Q. Did he drive to 2234 later on, Fremont Street, in a Hudson car?
A. No; he drove a Pontiac coupe.

837 Q. Where was the Pontiac coupe when he left 629 Webster Avenue?
A. When he got into the car it was parked on the street at 629 Webster.
Q. Do you know how it got there?
A. I can't say; it was parked there, though.
Q. Was it there when Herbert Haupt arrived at 629 Webster?
A. I didn't see it parked there: no.
Q. Was it there at the time when Herbert Haupt arrived at 629 Webster?
A. It was there at the time I arrived at 10:00 P. M. and remained there until he arrived, at which time he drove off in it.
Q. What have you got to do with this entire matter, what is your business?
A. I am a special agent.
Mr. WOLL. Pardon me?
Mr. WARNHOLTZ. I would like to know what his position is. What is your business, Mr. Hynes?
A. I am a Special Agent for the Federal Bureau of Investigation.
Mr. WARNHOLTZ. I didn't know that. That is all. Thank you kindly. One minute kindly, please. Thank you kindly.
(Witness excused.)

838 WILLIAM MAX SCHROEDER, called as a witness by the Government, after having been first duly sworn was examined and testified as follows:

Direct examination by Mr. HURLEY:

Q. Will you state your name?
A. William Max Schroeder.
Q. Your middle name?
A. Max.

Q. How do you spell your last name?
A. S-c-h-r-o-e-d-e-r.
Q. Where do you live, Mr. Schroeder?
A. 640 Webster Avenue.
Q. Where do you work?
A. I work at the Knickerbocker Hotel.
Q. That is here on the near north side?
A. 163 East Walton Place.
Q. How long have you worked at the Knickerbocker Hotel?
A. About eleven years now.
Q. That would take you back to about 1933?
A. About 1933.
Q. What type of work do you do there at the Knickerbocker Hotel?
839 A. I am elevator man now. I operate the elevator, the freight elevator.
Q. What kind of work were you doing between 1935 and 1940?
A. I was cleaning walls in the rooms.
Q. Cleaning the walls and that type of work?
A. Uh huh.
Q. Where were you born, Mr. Schroeder?
A. I was born in Berlin, Germany.
Q. When did you come to the United States?
A. In 1920; July.
Q. You served in the German army during the last war?
A. Yes; from 1914 to 1918, from the beginning to the end.
Mr. WARNHOLTZ. I object to that and ask that it be stricken as immaterial.
The COURT. Overruled. It identifies him.

By Mr. HURLEY:

Q. Did you belong to any World War Organizations in Chicago?
A. No; not now.
Mr. WARNHOLTZ. Objected to.
The WITNESS. I did.
Mr. WARNHOLTZ. Your Honor, he is leading him.
The COURT. Overruled.
Mr. HURLEY. All right.
840 Q. Did you belong to any organization——
A. Yes; the World War Veterans.
Q. The World War Veterans?
A. Yes, sir.
Q. And that is the German World War Veterans?
A. The German World War Veterans, that is the German Army. I was with them at that time from 1914 to 1918.
Q. When did you join the World War Veterans organization?

A. About 1935.
Q. Do you know Hans Haupt?
A. Yaah.
Q. Do you see him in the court room?
A. Oh, yes.
Q. Will you point him out?
A. There.
Mr. HURLEY. Indicating the defendant Hans Haupt.
Q. When did you first meet Hans Haupt?
A. It was 1935 in the World War organization when I joined it.
Q. When you joined the German World War Veterans organization?
A. Yes.

Q. Do you know whether or not Hans Haupt belonged
841 to that organization? Did he belong to the same organization?

A. To the same organization.
Q. How often did that organization have meetings?
Mr. BERTRAM. I object.
The WITNESS. Twice a month.

By Mr. HURLEY:

Q. I am asking generally how often they had meetings.
A. Every second Thursday and every fourth Sunday.
The COURT. Is that true throughout the period when you belonged to it?
A. Yes.

By Mr. HURLEY:

Q. Did you see Hans Haupt at any of those meetings?
A. Yes; very often.
Q. Did you talk to him at those meetings?
Mr. BERTRAM. I ask that the time be fixed.
The COURT. He is asking the year, these general questions. Overruled.
Q. During what period did you see him at these meetings there?
A. Often at the meetings.
Q. During what years?
A. 1935 to 1939 and in 1940 I resigned, I resigned as a member there.

842 By Mr. HURLEY:

Q. Do you know whether or not Hans Haupt ever worked at the Knickerbocker Hotel?
A. Oh, yes.
Mr. WARNHOLTZ. Objected to.
The WITNESS. He worked for them for one year.
Mr. WARNHOLTZ. I ask that that be stricken out. It is leading.

The COURT. Overruled. Every leading question isn't improper. That isn't a good objection.

The WITNESS. He started about 1936 and worked until 1937 at the same place I work now.

By Mr. HURLEY:

Q. And what kind of work did Hans Haupt do at the Knickerbocker Hotel?

A. He was painting, painter.

Q. How often did you see him during 1936 and 1937 at the Knickerbocker Hotel?

A. About every day.

Q. Did you talk to Hans Haupt there when you were working at the Knickerbocker Hotel?

A. Oh, yes, we were talking there.

Q. Now, what if anything did Hans Haupt tell you there at that time?

Mr. WARNHOLTZ. Objected to.

The COURT. Fix the time and place.

By Mr. HURLEY:

843 Q. During the year 1936 did you talk to him during 1936?

A. Oh, yes; we was talking.

Mr. WARNHOLTZ. I object. My objection goes to this conversation as irrelevant, incompetent, and immaterial and unless the date is specified he is supposed to follow that out then I will ask to clarify my objection.

The COURT. Overruled.

By Mr. HURLEY:

Q. Did you talk to Hans Haupt in 1936 while you were both working at the Knickerbocker Hotel?

A. Yes, sir.

Q. Do you recall about when he came to work there at the Knickerbocker Hotel in 1936, what month?

A. In 1936.

Q. Can you recall what month it was in 1936?

A. April or May; maybe it was May.

Q. Now after he came there to work did you talk to him?

A. Yes, sir.

Q. What did you talk about?

A. He was talking about——

Mr. BERTRAM. I object. The conversations are general. In 1936 it would be irrelevant here in this case.

844 The COURT. Well, it might be. Overruled.

Mr. BERTRAM. We would like to be heard on that, your Honor.

The COURT. Well, we talked about that the other day, didn't we? Is there anything different than what we said the other day?

Mr. WARNHOLTZ. I would like at this time to put in a formal objection, and I ask that it be put in the record.

We object on the ground it is incompetent, immaterial, and irrelevant and it tends to deny a fair trial to the defendant in this case and to support this contention I understand all these acts occurred prior to any acts charged in the indictment in this particular question. That they occurred prior to our entry into any war. That at the time of the making of these utterances, whatever utterances they may have been, it was lawful for the defendant to express himself favorably or adversely with reference to Germany or any other country in the world. If it was a lawful act at that time, it cannot be made to stand as a criminal act at a later date, supplying one of the elements of treason charged in the indictment, namely, "intent."

845 To bring in such remarks made so long ago by a defendant, would in effect be in the nature of a violation of the ex post facto law provision.

I further state if it were permitted as to this particular crime, which this man had nothing to do with, on the theory of his reputation, it is not allowable; it is not allowable to bring in past misdeeds, even when such resulted into a conviction.

The COURT. If is on the question of intent?

Mr. HURLEY. That is right.

The COURT. And intent only?

Mr. HURLEY. Well, limited to that purpose.

Mr. WARNHOLTZ. I also object further. I think, in a criminal case, the general rule is whatever the defendant did in a former case, even if a crime was committed, that cannot be admitted on a subsequent trial.

The COURT. I think it is admissible on the question of intent. Overruled.

Mr. BERTRAM. I also object on the ground of remoteness.

The COURT. Overruled. You are starting in with 1936?

Mr. HURLEY. Up until 1940.

The COURT. You expect to bring it down from 1936 to 1940?

Mr. HURLEY. By this witness.

846 The COURT. It might be remote if brought in before this instance from 1936 to 1940.

Mr. HURLEY. Yes.

Mr. WARNHOLTZ. With this witness.

Mr. HURLEY. Yes.

Mr. WARNHOLTZ. And by this witness.

The COURT. Overruled.

Mr. FINN. We will have later other witnesses to carry it further.
The COURT. Go ahead.

By Mr. HURLEY:

Q. What did you talk about?
A. We also talked about the time we were fighting in the war in the trenches; then he brought up about Hitler.
Q. What did he say?
A. He was in back of Hitler. He was in favor of Hitler.
Q. He was always in favor of Hitler?
A. He liked Hitler very much.
Q. He did?
A. Yes, sir.
Q. What else did he say about him?
A. He said——
Mr. BERTRAM. I move that the answer be stricken, "he liked Hitler".
847 The WITNESS. He said he would like to have a man like Hitler here to rule this country.
The COURT. Just a minute. Strike out what he liked about Hitler and tell us as near as you can what Mr. Haupt said about Hitler.
The WITNESS. He said we needed a man like Hitler here to rule the country like it was built up over there. A man like Hitler in charge would chase the Jews and like that.
The COURT. What about what?
The WITNESS. The Jews. He would chase them out of here like he did in Germany.
The COURT. I didn't get that. What did he say? I don't understand him.

By Mr. HURLEY:

Q. The Jews; what did he say about the Jews?
A. Haupt said we needed a man like Hitler here. We needed a rule like they did in Germany.
Q. Like who did in Germany?
A. Hitler.
Q. Who told you these things?
A. Hans Haupt.
Mr. WARNHOLTZ. You understand my objection stands to this entire conversation brought out.
The COURT. Yes.

By Mr. HURLEY:

848 Q. Now, how often did you have talks with Hans Haupt about that?
A. Very often.
Q. The first talks were where?

A. In the working place and in the meeting and before the meeting and after the meeting and at beer parties we were talking there so often I cannot remember, or repeat, everything what was we were talking about.

Q. Did you have talks of the same general nature over what period of time, over how long?

A. 1936 to 1940; then I resigned.

Mr. WARNHOLTZ. I object to this improper question, "did you have talks of the same general nature?" We would like to know what was said.

Mr. HURLEY. All right. You tell us what was said.

Mr. WARNHOLTZ. In every case fix the time.

The COURT. All right; fix the time. Sustained.

By Mr. HURLEY:

Q. Did you talk to him in 1936 after he came to work at the Knickerbocker?

A. Yes, sir.

Q. You stated that just a minute ago—that was about what month in 1936?

A. That was in 1936, in 1937; it was for then about each
849 week, once a month, a couple of times, the whole period.

Q. Did you talk to him once a week or twice a week after he came to work at the Knickerbocker?

A. Once a week, twice a week, like that.

Mr. BERTRAM. The witness doesn't know any particular conversation, any particular time and I move to strike it out.

The COURT. Ask him.

Mr. HURLEY. That is what I am trying to fix, if I can.

The WITNESS. I can't remember every day or date from that. it is long, too often was it.

Q. Now, after he came to work at the Knickerbocker, it was in the spring of 1936?

A. Uh huh.

Q. You remember that?

A. Yes, sir.

Q. You talked with him after that, how often did you talk to him about Germany?

Mr. WARNHOLTZ. Objection.

The COURT. Overruled.

The WITNESS. A couple of times.

By Mr. HURLEY:

Q. About?

A. A couple of times, more than that.

Q. A dozen times or more?

830. A. Yes, sir.

Q. Was that started in the spring of 1936?

A. Yes, sir.
Q. Where did you have those talks?
A. Down in the lunch room where we ate our lunch.
Q. Where was the lunch room?
A. In the basement.
Q. In the Knickerbocker Hotel?
A. Yes, sir.
Q. Did you talk to him any more, and if so, where?
A. In the room where the painting was. I was in the rooms, too; sometimes we talked, too.
Q. Anywheres else besides in the Knickerbocker Hotel?
A. In the World War Organization.
Q. Was that at the meetings of this organization?
A. After the meetings and before the meetings.
Mr. WARNHOLTZ. I ask, your Honor, that the time be fixed.

By Mr. HURLEY:

Q. When was the first time you talked with him at organization meetings, if you can recall?
A. It was in 1935, summer.
Q. Did you talk to him at every meeting?
A. Not every meeting; no.
Q. How many meetings?
A. Very often, too.
Q. Well, how many meetings did you have a month?
A. In the month, two meetings.
Q. Two meetings?
A. Yes, sir.
Q. That would be twenty-four meetings a year; is that right?
A. Yes, sir.
Q. At how many of those meetings did you meet Hans Haupt?
A. Maybe about twelve or fourteen times like that.
Q. On how many of those occasions did you have your talks with Hans Haupt about Germany?
A. About that same number—twelve times like that; I can't remember.
Q. That was after the meetings and during the meetings?
A. And before the meetings.
Q. And you belonged to the German World War Veterans Organization for how long?
A. I resigned in 1940, about June or July.
Q. Did you attend meetings every month during those years in 1935 to 1940?
A. I was at each meeting.
Mr. WARNHOLTZ. Just a moment. I will object to that.

By Mr. HURLEY:

Q. Did you attend?

A. Yes; I attended meetings.

MR. WARNHOLTZ. I object as this is immaterial to the issues in this case, where he attended or whether or not he attended.

The COURT. Overruled.

The WITNESS. Yes; I was at those meetings.

By Mr. HURLEY:

Q. During the year 1937 how many times did you see Hans Haupt at this organization's meetings? About how many times?

A. Well, at least once a month in our meeting.

Q. During 1938 about how many times would you see him at the organization meetings?

A. Often, too.

Q. What is that?

A. Only I did not miss not many meetings and Hans not either. He was often there, too.

Q. About how many times? Would your say half of the times?

A. More than that.

Q. More than that?

A. More than that.

Q. Twenty-four meetings?

853 A. About three-quarter of the time, maybe.

Q. During the year 1939 did you see him at the organization meetings?

A. I say about the same.

Q. About the same time?

A. Yes.

Q. About the same number of times?

A. About three-quarters.

Q. When in the year 1940 did you resign from that organization?

MR. WARNHOLTZ. That is objected to, your Honor. He has not stated he resigned.

Mr. HURLEY. He originally said that he resigned.

Q. Tell us when or how long you belonged to this organization?

A. May 1935 to June or July 1940.

Q. Then what happened in June or July of 1940?

A. I resigned. I did not like it no more.

MR. BERTRAM. I move to strike that he did not like it.

The COURT. Let it stand.

By Mr. HURLEY:

Q. Did you see Hans Haupt during 1940 up until the time you resigned from the World War Veterans organization?

854 A. I met him once on Fullerton and Halsted Streets when

he went with his wife there. I lived in that neighborhood and he told me that Herbert went to Mexico.

Q. About when was that he told you that?

A. That was about in the fall, November or October, 1941.

Q. Did he tell you anything else at that time?

A. No.

Q. Did you ask why he had gone to Mexico?

Mr. BERTRAM. I object to leading the witness.

The COURT. What?

Mr. BERTRAM. I object to leading the witness.

The COURT. Sustained.

By Mr. HURLEY:

Q. Did you say anything to Hans Haupt when he told you that Herbert had gone to Mexico?

A. I did not say anything, but I was thinking I did not believe it.

Q. In 1940, this German World War Veterans' organization—you say you resigned in June?

A. I resigned.

The COURT. In June or July is what he said.

The WITNESS. June or July. I do not remember any more.

By Mr. HURLEY:

Q. Did you attend meetings of that organization between the first of January and the time you resigned in June or July, of that organization?

855 A. Yes; I attend meetings in that time.

Q. About how many did you attend?

A. In my belief then after 1939, when I got to pull out, drew out. I was against that money for Germany, for Hitler. I did not go along.

Mr. BERTRAM. That is not responsive and I ask that be stricken.

Mr. HURLEY. I do not object to that.

Q. How many meetings did you attend during 1940, about how many?

A. Maybe two or three.

Q. Did you see Hans Haupt at any of those meetings?

A. Yes; he was there then.

Q. Did you at one of those meetings in the latter part of 1939 or the early part of 1940 have a talk with anybody in the organization about relief?

A. About?

Q. About relief?

A. From the relief for Germany.

Q. Just say yes or no, did you?

A. Yes, sir.

Q. Was that meeting in 1940?
A. No; it was in 1939, in the fall, I guess.
Q. In the fall of 1939?
A. September or October, I am not sure of that.
856 Q. Did you talk to Hans Haupt about that?
A. Yes. After the meeting he comes to me, told me I should not talk against that, that they send money to Germany. I was talking in the meeting. I have been against it. I did not like to send money over there that Hitler might buy machine guns or ammunition for it. Everybody jumped on me, pull me——

Mr. BERTRAM. I object to that.

A. Hans comes to me, told me I should shame myself, I am born in Germany——

Mr. BERTRAM. May we have our objection, your Honor?

The COURT. What is your objection?

Mr. BERTRAM. Our objection about the statement of what the witness said during the meetings be stricken.

The COURT. He said that he said something during the meetings; that after the meeting the defendant came to him and said he should not say that.

The WITNESS. That is right.

The COURT. That is what he testified. Objection overruled.

By Mr. HURLEY:

Q. What was it that you said during the meeting that you talked to Hans Haupt about afterwards?
857 A. Through the meeting I would say it was—I did not think the organization want to send $500 over there to Germary.
Q. The organization wanted to send $500 to Germany?
A. Yes; I was standing up, I was speaking against it.
Q. You were?
A. Where our money goes. It was for poor people, but I was thinking they do not go to the poor people, maybe Hitler get, you know, and buy machine guns and ammunition. I did not like that.
Q. Did you talk to Hans Haupt after the meeting about what you said in the meeting?
A. No. He comes alone of himself. He told me I should shame myself.
Q. What did Hans Haupt say about money, what is your recollection?
A. I shame myself, I am born in Germany.
Q. He said you should be ashamed?
A. I should shame myself, that I am born in Germany.
Q. Did he say anything else?
A. Not then—I am not a good German.

Q. Who said that?
A. Hans Haupt.
Q. Yes?
858 A. One day I told him—we were talking more than once. I told him: "It is right——" other time—"if you like Germany better why don't you got back there."
Q. Did he say anything when your told him that?
A. No.
Q. Was there anything said in this conversation you talked about after the meeting——
A. No.
Q. Did Hans Haupt say anything else?
A. Nothing else than that, what I just repeat here.
Q. Did you know Mrs. Erna Haupt?
A. Yes, sir. I know Mrs. Erna Haupt, too, his wife at parties.
Q. What?
A. We got Sunday parties, beer parties and by picnics I see her there.
Q. Did you ever talk to Hans Haupt about his wife taking a trip?
Mr. BERTRAM. I object to the leading question, leading the witness, your Honor.
Mr. WARNHOLTZ. I object. Counsel is constantly leading the witness, your Honor, and it will not be necessary for us to object any more because the witness will already know what he
859 wants to ask when he asks a nonleading question. I wish counsel would stop. He knows the rules of evidence.
The COURT. Yes or no on this. Yes or no, what is the answer?
A. I saw Mrs. Haupt often.
Mr. HURLEY. Will you read the question?
(Question read:
"Q. Did you ever talk to Hans Haupt about his wife taking a trip?")
A. Yes, sir.
Q. When did you talk to him about that.
The COURT. Your objection is overruled.
A. It was before the trip started.

Mr. HURLEY:

Q. When was the trip, if you know, what year?
A. 1938.
Q. Where did—did you know where that trip was to?
Mr. BERTRAM. Objection.
A. Yes.
Mr. BERTRAM. We do not know what trip.
A. That trip, went to Germany.

The COURT. Well, you have better confine this conversations between them, this witness and Mr. Haupt.

860 Mr. HURLEY. I want to identify the object if I could.

The COURT. All right.

By Mr. HURLEY:

Q. Did you talk to Hans Haupt about this trip?

A. Yes, sir.

Q. About when was that, as best you can recall?

A. It was in the Knickerbocker Hotel, during working time, then in that time 1937 working, and our organization was getting a savings fund.

Q. Savings bank?

A. To pay $5.00 every meeting in the fund, get your carfare together then for that trip.

Mr. BERTRAM. I object to that. It is not proper or relevant, your Honor.

A. Any who wants to pay it, they may $5.00, $10.00.

The COURT. Let that stand.

A. In your bank book.

By Mr. HURLEY:

Q. What was that fund for?

A. That was to pay the trip.

Q. Trip to where?

A. To Germany, to the Tannenberg exhibition.

Q. What is that?

A. The Tannenberg.

Q. Tannenberg?

A. Yes, sir.

861 Q. Did Hans Haupt talk to you about that Tannenberg exposition?

A. Yes, sir.

Q. When was the time he talked to you about it?

A. About 1937—1938.

Q. When was the exposition held, what year?

A. 1938.

Q. What did Hans Haupt tell you about it then when he talked to you about this Tannenberg exposition?

A. His wife goes over.

Q. He told you that?

A. Yes, sir.

Q. Did he tell you she was going?

A. Yes, sir; I know that, members what went over there. It

was a bunch went over there, about thirty or forty went over. Mrs. Haupt did too.

Q. Were they all members of this World War Veterans Organization or their wives?

A. Yes, sir.

Q. Did Hans Haupt talk to you about the trip after Mrs. Haupt had made the trip?

A. After she comes back?

Q. Yes.

A. Yes, sir.

Q. What did Hans Haupt tell you about that?

862 A. His wife told him it was very nice over there, and Hitler built Germany up, cannot build it better than it is now, we need a man here to build, make like Hitler built up Germany over there.

Q. Did he say anything else after Erna Haupt came back, about Germany that you can remember?

A. One thing I remember now. He was talking to me, "Before I send Herbert over to Germany to fight against Germany I kill him myself."

Q. What was that?

A. "Before I send Herbert over to Germany, leav Herbert fighting an American fight against Germany, I kill him myself."

Q. Before he would let him fight against Germany he would kill him himself?

A. Yes.

Q. Hans Haupt told you that?

A. Yes.

Mr. BERTRAM. Ask the witness to fix the date.

The COURT. When was that, time and place.

A. It was during 1938 when the war was on over there, and Hitler jumped on Poland and France, and his wife was coming back from Germany, made the trip them.

Mr. BERTRAM. 1938?

By Mr. HUXLEY:

863 Q. Did he ever say anything to you about his son going back to Germany?

A. Yes.

Q. What did he say about that?

Mr. BERTRAM. Wait a minute.

A. It was 19——

Mr. BERTRAM. I object to that unless the time and place is fixed. Counsel gives the statement first and later on sometime fixes the date.

Mr. WARNHOLTZ. Sometimes he omits it. After that was——

Mr. HURLEY:

Q. Will you tell us?

A. That was 1936. Haupt was working in the Knickerbocker Hotel, too, for a couple of weeks.

Mr. BERTRAM. Objection on the ground, too remote.

The COURT. Overruled.

A. He had it out—when he was going and told me, "I would like to send him back. I think I will send him back to Germany, that he learn the trade over there, get raised up like the German kids over there."

Mr. HURLEY. Cross-examine.

Mr. BERTRAM. Just a moment, if the Court please.

Mr. WARNHOLTZ. We make a motion for a mistrial at this time on the ground that the testimony of this witness positively
864 denies the defendant a fair trial on the charges made against him in the indictment.

The COURT. Denied.

Mr. BERTRAM. We further want to ask the Court to exclude all of the testimony of this witness on all grounds heretofore stated to the Court.

The COURT. Motion denied.

Mr. WARNHOLTZ. No cross-examination.

The COURT. How long will your cross-examination take?

Mr. WARNHOLTZ. No cross-examination, your Honor.

The COURT. No cross-examination?

Mr. WARNHOLTZ. That is right.

(No cross-examination. Witness excused.)

The COURT. Take a short recess, ladies and gentlemen.

(Short recess here taken.)

The COURT. Proceed.

Mrs. LOUIS FISHMAN, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. FINN:

Q. Will you please state your name?

865 A. Mrs. Louis Fishman.

Q. You will have to speak up loudly and distinctly so that everyone will hear you.

A. Fishman.

Q. Mrs. Louis Fishman?

A. Yes, sir.

Q. Where do you live?

A. 1240 Hohlfelder Road, Glencoe.

Q. Glencoe?

A. Glencoe, Illinois.

Q. Do you know the defendant, Hans Max Haupt?

A. Very well.

Q. Will you point him out in the courtroom?

A. That gentleman.

Mr. FINN.—Indicating the defendant.

Q. Do you know his wife, Erna Haupt?

A. Very well.

Q. When did you first become acquainted with Erna Haupt?

A. Approximately the late of 1935.

Q. Do you mean the latter part of 1935?

A. The latter part of 1935.

Q. How did you happen to become acquainted with her at that time?

A. She came in and worked for me as a maid.

866 Q. Where were you living at that time?

A. 4300 Marine Drive.

Q. In Chicago?

A. In Chicago.

Q. How many times a week did she work for you?

A. She came in two or three times a week as a maid, to clean.

Q. How long did Erna Haupt continue in your employment while you were living at 4300 Marine Drive?

A. Continuously until we moved to Glencoe in 1940.

Q. When in 1940 did you move to Glencoe?

A. In February of 4940.

Q. During all that period of time from the latter part of 1935 until February of 1940, did she continue in your employment?

A. Yes; she did.

Q. During that period of time did you become acquainted with Hans Max Haupt, the defendant in this case?

A. Yes, sir.

Q. How frequently would you see him during that time?

A. He would call for Erna in the evening, take her home. If she was staying for dinner he would eat there, too.

867 Q. Would he help on occasions?

A. Sometimes helped with the dishes, yes; and sometimes painting for me, odds and ends.

Q. Did you know Herbert Haupt in his lifetime?

A. Very well.

Q. When did you first become acquainted with Herbert Haupt?

A. When Erna was working for me, when Herbert was quite a young boy, in 1935.

Q. Would that be shortly after——

A. 1935 or 1936.

Q. In February of 1940 you moved to Glencoe, is that correct?

A. Yes, sir.

Q. Did Erna Haupt continue to be employed by you while you were living in Glencoe?

A. When we first moved to Glencoe Erna came in the beginning to help me. Hans came also to help. Then they came as a couple in the first part of March 1940.

Q. Did Hans Haupt and Erna Haupt from that time, the summer of 1940 up until a year or so later; did they live on your place at Glencoe?

A. They did.

Q. Who lived there with them?

868 A. Herbert Haupt, Hans Haupt, and Erna.

Q. About how old was Herbert Haupt at that time?

A. Herbert Haupt had his twenty-first birthday in my home.

Q. Where did they live?

A. They lived in the quarters up over the garage.

Q. There was an apartment above the garage?

A. An apartment over the garage.

Q. During that period of time, do you know whether Herbert Haupt was employed any place?

A. At the Simpson Optical Company.

Q. During the summer of 1940, did Herbert Haupt live there?

A. He lived there continuously.

Q. Did he go away on week ends during the summer of 1940?

A. Yes, he used to go to Ludington, Michigan, to a bund camp.

Mr. WARNHOLTZ. That is objected to, your Honor. I ask that it be stricken. It is immaterial to the issues in this case, the charges in the indictment, what Herbert Haupt did in 1940.

The COURT. Overruled.

By Mr. FINN:

Q. Did you have any conversations during the summer
869 of 1940, the summer month of 1940, with Hans Haupt, Hans Max Haupt, the defendant in this case, with reference to where Herbert was going at that time?

A. Yes, we discussed that frequently.

Mr. BERTRAM. Objection.

Mr. FINN. Just a minute please. Just answer the question.

Mr. BERTRAM. I object to that question.

The COURT. Overruled.

The WITNESS. Yes.

By Mr. FINN:

Q. Where would these conversations take place?

A. In the kitchen of my home.

Q. Will you tell us what Hans Max Haupt told you at that time with reference to what Herbert was doing on the week ends?

Mr. BERTRAM. The same objection.

The COURT. Overruled.

Mr. BERTRAM. Made previously, on the same ground, if the Court please.

The COURT. Overruled.

A. Hans said that Herbert was going to Ludington, Michigan, to a German Youth Camp, also to Wernecke's farm. I asked what they would do up there and he said they would go up there and train, it was the proper thing for German people, who
870 were real Germans to send their children there and raise them like that.

By Mr. FINN:

Q. I will show you Government's Exhibit 3 for identification and ask you if you can tell us who that is?

A. That is Herbert Haupt.

Q. I will show you Government's Exhibit 6 for identification and ask you to tell us who that is.

A. Herman Neubauer.

Q. Is that the way you pronounce it?

A. Yes; that is the way they pronounced it to me.

Q. Did you ever see this man represented by Government's Exhibit 6 for identification in your place at Glencoe, Illinois, with Herbert Haupt?

A. Yes; in the fall when Herbert was fixing his car he was out there helping him.

Q. The fall of what year?

A. Of 1940.

Q. How many times was Neubauer up to your premises there?

A. Probably three or four.

Q. You mentioned something about training. Did you ever see any of these boys leave your premises?

A. Yes; Herbert would leave with the boys, Wolfgang Wergin.

871 Q. Who?

A. Wolfgang Wergin.

Q. Will you name some of the boys?

A. Ernie Scharf.

Q. How many times was Wolfgang Wergin up to your premises during that summer?

A. He was a week-end visitor most of the summer.

Q. Who else would come up there with Herbert?

A. Ernie Scharf.

Q. Anybody else?

A. A boy by the name of Carl. I do not remember his last name.

Q. Anybody else?

A. Wernecke.

Q. What Wernecke do you mean?

A. William Wernecke who had a farm in Highwood.

Q. What would these boys do?

A. Take rifles out of the apartment—out of the house over the garage where Erna and Hans lived, go out in uniforms.

Q. What kind of uniforms did they wear?

A. Brown pants, white shirts, black ties, black leather puttees laced up the front.

Q. You said they kept these rifles where?

A. Up over the garage in Hans and Erna's home.

Q. During that period of time that you mentioned, from
872 March 1940 to March 1941 did you have any conversations with Hans Haupt or with Erna Haupt in Hans' presence?

A. Yes.

Q. At your place out there?

A. Yes, many times.

Q. How frequently would you have these conversations?

A. Three or four times a week when I was home.

Q. Will you tell us, starting with the first conversation, will you tell us what was said by Hans Haupt on those occasions?

A. It was during the time——

Mr. BERTRAM. I ask the time and place be fixed.

By Mr. FINN:

Q. When was the first time you recollect after March of 1940, when they moved up to your premises, when was the first time you had a conversation with Hans?

A. The first time I had a conversation with Hans pertaining to Germany and War it was when Germany invaded Russia, around that time.

Q. Do you recollect when that was?

A. In the summer—in the middle of—it was warm weather. I would say around the first part of June, the latter part of May.

Q. That would be in the year——

A. 1940.

873 Q. Who was present at that conversation?

A. Erna and Hans and sometimes Herbert in the kitchen.

Q. Will you tell us what was said on that occasion by Hans Haupt?

Mr. BERTRAM. Wait a minute, "sometimes Herbert." She is talking of several times. You are talking of one time.

The COURT. Well, the first time.

By Mr. FINN:

Q. I am speaking of the first conversation. Do you recollect whether Herbert was there or not?

A. I do not recall.

Q. Was Erna there?

A. Erna and Hans were both there.

Q. You yourself?

A. Yes.

Q. Will you tell us what was said by Hans on that occasion?

Mr. BERTRAM. If the Court please—just a moment, Mr. Finn. I would like to make an objection to this testimony; object to the question and the answer that the witness may give on the same grounds, all of the same grounds that were made to the testimony of the previous witness, Mr. Willie Schroeder.

The COURT. Yes.

874 Mr. BERTRAM. And the further ground——

The COURT. I understand the testimony of this witness and of Willie Schroeder is being offered on the ground only of intent?

Mr. FINN. That is correct, your Honor.

The COURT. I think I should instruct the jury to that effect, then.

Mr. FINN. All right, your Honor.

The COURT. Ladies and gentlemen: The testimony of this witness on the stand, Mrs. Fishman and that of the preceding witness, whose name is Schroeder, the witness who immediately preceded Mrs. Fishman on the stand is received on the question of intent and the question of intent only. You will consider it only on the question of intent.

Mr. FINN. I might also add, your Honor, that there is one more witness on the same subject, possibly. His name is Poppe. Do you want to instruct the jury at this time, your Honor? It is also received on that basis?

The COURT. I am informed that there is one other witness by the name of Poppe, whose testimony will be only on the question of intent and whatever he says will be received only on the question of intent, but not otherwise.

875 Mr. BERTRAM. Did your Honor make a ruling on my objection?

The COURT. They are overruled.

Mr. BERTRAM. Overruled?

The COURT. I overruled them.

By Mr. FINN:

Q. Will you tell us what was said by Hans Haupt on that occasion, Mrs. Fishman?

A. Well, Hans Haupt on that occasion said that Hitler was a God send to the German people, that the people over there had been crucified and suffering for so long; that he was really their salvation; that he was going to make conditions better for them;

that he would see that they had what they should have had; that what had been lost in the last World War they had regained now.

Q. Will you tell us anything further that was said on that occasion?

A. Yes.

Q. By Hans Haupt?

A. Yes. Hans Haupt said that if we entered war against Germany we would have a revolution in this country like they had there after the last war; that we have German organizations back here that would take our armories over, our electrical companies, our telephone companies; that the same thing would
876 happen to us as happened in Norway and France, that we would be taken from within by Fifth Column activities.

Q. What did he say about that?

A. He said that France and Norway was taken from within by Fifth Column activities; they were asleep and we were, too.

Q. Do you recall anything further that was said with reference to the utilities that you spoke of just a moment ago?

Mr. BERTRAM. Mr. Finn is not asking as to any particular date or time. I object to the form of that question.

By Mr. FINN:

Q. At the same conversation?

A. At this same conversation, which happened, as I said, the latter part of May, the date I do not remember.

Mr. BERTRAM. What year. What was the year?

A. 1940.

Mr. BERTRAM. 1940?

By Mr. FINN:

Q. Do you recall anything further that was said in this conversation, Mrs. Fishman?

A. The conversation was just general about the conditions in the United States; that they thought we were of the mother country of England.

877 Mr. BERTRAM. Just a moment, I object to any general conversation. We certainly have to draw the line somewhere, if your Honor please.

The COURT. Well, just tell what you can remember what Mr. Haupt said at this one conversation. That is all that the District Attorney is asking you about now.

A. During this particular conversation he said the fifth column activities took Norway and France from within.

Mr. BERTRAM. I object to that, repetition. The question calls for repetition. The repetition of a previous answer.

The COURT. That is repetition. It may go out.

Mr. BERTRAM. I move it be stricken.

By Mr. FINN:

Q. Did you have any later conversation with Hans Haupt on the subject?

A. Yes.

Q. How frequently did you have conversations with Hans Haupt on the subject of this character?

A. Three or four times a week.

Mr. WARNHOLTZ. That is objected to, your Honor, "of this character", anything like that.

The COURT. Let it stand. They have a right to show something about it. It does less harm, questions and answers of that
878 kind than detailing each and every one of them.

By Mr. FINN:

Q. Do you recall when you next remember—tell us when the next conversation of that character was.

A. Probably a few days later, that date I do not recall.

Q. Do you recall what was said by Hans Haupt on that occasion?

A. Yes. The radio would be on, as long as things would be going well, or anything, why, that is I should say about——

Q. That is your conclusion. I want you to tell us what Hans Haupt said.

Mr. BERTRAM. I move it go out.

Mr. FINN. It may go out by agreement.

Mr. BERTRAM. Strike it out.

By the WITNESS:

A. Hans Haupt said if we entered the war against Germany we were going to have a revolution in this country, that our utilities and the armories, the telephone companies, and the police department, that they had people in there, they would be taken from within.

Mr. BERTRAM. I object to that answer and move the answer be stricken as a repetition of a previous statement by the witness.

879 The COURT. Unless he said that again, overruled.

Mr. BERTRAM. I understood it was the same conversation.

The COURT. No, I think not.

By Mr. FINN:

Q. Did Mr. Haupt explain? You said they had people in there which—did Mr. Haupt explain what he meant by that?

Mr. BERTRAM. Object to the form of the question.

The COURT. Overruled.

A. The German organizations that he belonged to, and which he had been attending their meetings on Mondays and Fridays at the Atlantic Hotel.

Mr. FINN. I think that is all with this witness.

Mr. BERTRAM. I want to move the Court to strike out all the testimony of this witness, Mrs. Fishman, upon all of the grounds that have heretofore been stated to the court; and on the further ground of the remoteness of all the testimony to the time of the indictment and the subject matter of this date.

The COURT. Denied.

Cross-examination by Mr. WARNHOLTZ:

Q. Mrs. Fishman, these conversations took place during
880 the time when there was a great deal of newspaper publicity about various opinions of the United States, pro and con as to our entering into the war at a future time, is that right?

A. No; that took place before that, but they were never as heated an argument as they were after we entered the war, when Erna came back from Germany in 1939, the same conversations would take place.

Q. Then after we entered the war—I mean while the conversations took place there was a great deal of newspaper writing about meetings with Colonel Lindbergh and General Wood, so-called isolationists and others who were—others called the opposite, whatever it was, trying to keep us—trying to get us into the war?

A. Not a great deal. I was not a great deal interested. That was their topic of conversation.

Q. You talked to them about three or five times a week on that subject?

A. Three or four times, when I was home in the kitchen, assisting in the work with Erna. Erna and Hans were treated as one of the family, not treated as help.

Q. And then you would engage in conversation?

A. They would engage. Their conversation—the radio would be on. They would be interested.

881 Q. The radio would be on?

A. The radio in the kitchen would be on. That was their topic of conversation, had their interest.

Q. When it was on the radio constantly?

A. Not constantly, news broadcast.

Q. On the radio?

A. It was not on the radio. It was their topic of conversation. They would listen to the news broadcast over the radio, from the German hour. After it was over it would be their topic of conversation.

Q. You would sit there listening to it?

A. Stayed in the kitchen as long as I was occupied.

Q. You did not engage in any conversation with them about this subject matter, did you?

A. No, no.

Q. Did your husband tell you that they had a right to their own opinions?

A. Well, my husband defended them. He said they were German people, from the old country, they were harmless; said when we entered war they would think different.

Mr. WARNHOLTZ. That is all.

Mr. FINN. That is all. Thank you.

(Witness excused.)

882 Mr. WOLL. We may have a slight delay of two or three minutes, if your Honor please, with the next witness.

(The following statement was made by Mr. Woll to the Court, out of the hearing of the jury:

"While we are waiting for the witness, if your Honor please, I would like to tell your Honor this witness is one of the witnesses whom we referred to, who said Hans Haupt made certain statements in connection with his knowledge about Herbert Haupt's mission?

The COURT. Admissions?

Mr. WOLL. Admissions.

The COURT. Yes.")

(The following proceedings were had in the presence and hearing of the jury:)

JOHN MAJERCZAK, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. WOLL:

Q. Will you state your name?

883 A. John Majerczak.

Q. What is your first name?

A. John.

Q. Keep your voice up, will you please?

A. Yes, sir.

Q. Are you also known by any other name?

A. Stanley Norris.

Q. That is N-o-r-r-i-s?

A. Yes, sir.

Q. At the present time you are incarcerated in the State Penitentiary at Joliet, are you not?

A. Yes, sir.

Q. You are in the penitentiary as the result of a conviction of some crime, are you not?

A. Yes, sir.

Q. What is the sentence you are now serving?

A. Life for robbery.

Q. Life for robbery?

A. Yes, sir.

Q. Before this conviction of life for robbery, had you had any prior conviction in Illinois?

A. I did. I had a year, or one to twenty in Pontiac before, in the reformatory.

Q. You were sentenced to one to twenty years in Pontiac Reformatory?

884 A. Yes, sir.

Q. What were you convicted for and sentenced?

A. Robbery.

Q. Calling your attention to some time in July of 1942, were you in the Cook County jail?

A. Yes, sir.

Q. Were you in the Cook County jail then on the charge for which you were later convicted?

A. Yes, sir.

Q. Do you know Hans Max Haupt?

A. Yes, sir.

Q. Do you see him in this courtroom?

A. Yes, sir.

Q. Will you point him out, please?

A. The gentleman sitting there.

Q. Was Hans Max Haupt in the county jail at any time when you were in the county jail?

A. Yes, sir.

Q. Calling your attention to July of 1942, in what tier or cell block were you in the county jail?

A. I was on H-4, cell 8.

Q. Do you know where Max Haupt was?

A. He was in H-4, cell 2.

Q. Do you know the distance between the cell occupied by Hans Max Haupt and the cell occupied by you?

885 A. Between 35 and 40 feet.

Q. At any time while you were in the county jail and while Hans Haupt was also in the county jail, did you have a conversation with Hans Haupt or were you present when Hans Haupt had a conversation with anyone else in the County Jail?

A. I talked——

Q. Yes or no?

A. Yes.

Q. Do you recall approximately the first time you spoke to Hans Haupt?

A. It was the first night that I came on H-4.

Q. I am sorry. The first night you came on H-4?

A. Yes.

Q. Do you recall what night that was, approximately what it was?

A. July 21st.

Q. What year?

A. 1942.

Q. What did he say to you on that occasion?

Mr. BERTRAM. If the Court please, I would like to object on the ground that calls for oral statements not made in court, but supposed to have been made by the defendant Hans Haupt.

The COURT. Overruled.

By Mr. WOLL:

Q. Do you remember the question?

886 A. Yes, sir.

Q. Will you answer it, please?

A. Yes, sir. The answer is yes.

Q. What did Hans Haupt say to you the first time you had a conversation with him, on the night that you arrived on that particular tier?

A. He asked for a newspaper. He addressed his conversation to anyone in the cell tier. He asked for a newspaper—who had a newspaper. I answered I had one.

Q. Yes.

A. And he wanted—he asked was there anything in there about him. I did not know who he was. I asked him his name, so he told me his name was Hans Max Haupt.

I looked through the paper. There was nothing in there, there were a lot of things that were cut out. I told him that somebody cut out, "there is nothing in there with his name in it." That is all that was asked me then.

Q. Did he later say anything else there to you or to anyone else?

A. Yes, sir; later. Not that night. Just asked for a paper, and if it was his name in there.

Q. When was the next time?

887 Mr. BERTRAM. This is on the same objection, to any further conversation?

The COURT. Yes, overruled.

By Mr. WOLL:

Q. When was the next conversation that you had with Hans Haupt that you recall, or the next conversation that Hans Haupt had with anyone else that you overheard?

A. He was talking with a fellow by the name of Carl Hamby, the next cell, 4. He was asking about advice on the attorney whom he was going to hire.

Mr. BERTRAM. Objection.

Mr. WARNHOLTZ. The time is not fixed.

Mr. BERTRAM. In asking for advice, asking for——

Mr. WARNHOLTZ. Nor is the time fixed when this happened in this conversation.

The COURT. Overruled.

The WITNESS. The next night.

The COURT. That may go out.

Mr. WOLL. Are you objecting to the word "advice"?

The COURT. That he was asking for advice.

Mr. WOLL. I might say, if your Honor please, I can shorten it considerably in a lot of talk if I could ask a few leading questions, I could shorten it up somewhat.

Mr. BERTRAM. My objection was to all of the answer, Mr. Woll.

888 Mr. WARNHOLTZ. I want the time placed; when was it, July 22nd?

Mr. FINN. July 21st on the first, and the second was on July 22nd.

By Mr. WOLL:

Q. This is the conversation that you are recalling which was the night following the 21st of July 1942?

A. Yes, sir.

Q. Will you tell us exactly what Hans Haupt said? Do not characterize what he said, but state in the exact words as best you can.

A. He asked Carl Hamby what he thought of attorney Benjamin Short.

Q. Did Mr. Hamby reply? Did he reply?

A. Hamby said he did not know nothing of him.

Mr. BERTRAM. Benjamin Short, a lawyer; is that it?

The COURT. I do not think that has any materiality.

Mr. WOLL. I did not want to go into it. I did not want to lead.

The COURT. You are insisting that he not be lead.

Mr. WOLL. They want the whole conversation.

The COURT. Presenting in the light——

Mr. WOLL. I will have this man, Judge, tell the story.

889 Mr. BERTRAM. I am inquiring as to the name, as to the name. I did not hear.

The COURT. Direct his attention to a general subject, any conversation about that general subject.

Mr. WOLL. All right.

Q. Did Hans Haupt at any time in your presence talk with anyone or talk with you about the matter for which he was then in the County jail?

A. The third night I was in the County jail we were discussing—I asked him what his charge was and he told me he was in the County jail for having German money.

Q. Yes.

A. I asked him—I said: "Was it German marks?" He said: "No; it was United States money from Germany."

Q. Yes.

A. And he asked me what my charge was and I told him what my charge was. Each one at that time there told what his charge was, just compared our charges, what we were in the County jail for. It was a general conversation.

Q. Then did you have any further conversation, or did you take part or listen to any further conversation that Hans Haupt had in regard to the charge or the facts concerning his case?

890 Mr. WARNHOLTZ. Fix the time.

By Mr. WOLL:

Q. Were you present at any further conversations along that line?

The COURT. Yes or no.

The WITNESS. Yes; I was present.

By Mr. WOLL:

Q. Do you recall about when that was?

A. Mr. Haupt was talking to Carl Hamby about the Battle of Stalingrad and that was taking place.

Mr. Haupt and Hamby were saying that the Germans would take Stalingrad, and a fellow by the name of Bruno Jackmiak, and an officer was saying they would not.

Mr. Haupt was there telling Hamby and other fellows that were listening, that it was a regiment there that he was in, in the last war, in that battle of Stalingrad, and that they were veterans and that they would take it; that was his reason for them taking Stalingrad.

Mr. WARNHOLTZ. Can you tell the time, please?

By Mr. WOLL:

Q. When was this conversation, the best you recall?

A. The fourth or fifth night.

Q. Was there anything further said about Germany or the war?

A. Yes. Mr. Haupt compared—that is the destruc-
891 tion going on during this war with the last war and he prophesied that Stalingrad would be taken, it would be revealed; and he also told Hamby and the men who were listening that this war is a destructive war and not like the last war.

Q. Well, did he at any time talk of or mention Herbert Haupt?

A. Not then; no, sir.

Q. Did he later?

A. Yes, sir.

Q. Do you know about when that was?
A. That was on a Sunday.
Q. On a Sunday?
A. Yes.
Q. Tell us what you recall about that particular conversation on the Sunday?
Mr. WARNHOLTZ. What Sunday?
The WITNESS. That was the Sunday—I left the tier, I believe, three days after. It was the 8th or 9th, I will say, of August.
Mr. WOLL. I will ask this question:
Q. Do you think that is about the 8th or 9th of August?
A. Yes, sir.
Q. Of what?
A. August, 1942.
Q. Will you give the conversation, please?
892 A. Mr. Haupt received word that his son——
Mr. BERTRAM. Your Honor, I move to strike the answer. He said he received word.
The COURT. Just tell us what he said.
Mr. WOLL. I might try to bring it out in a different way, if your Honor please.
Q. Were there any newspapers prior to this conversation; were any newspapers shown to Hans?
A. He ordered the American.
Q. Did he read it?
A. Yes, sir.
Q. After he read it, did he say anything?
A. He complained that the censor tore everything out of the paper pertaining about his case.
Q. What happened then?
A. He asked Carl Hamby, the fellow in 4, if he could get him the newspaper, and Carl Hamby got him the Chicago Times, the Chicago Sunday Times, that Sunday about 4:30 p. m., and he gave him that paper.
Mr. Haupt had it in his cell for a few hours and Carl Hamby was asking for the paper; he wanted to see what was in there.
When Mr. Haupt got through with it he was upset—he was upset and he was repeating over and over that Herbie—
893 "They killed my son Herbie, they killed Herbie. It will hurt his mother when she gets this news."
Q. After that particular talk did you subsequently hear, later on, hear Hans Haupt talk about Herbert in relation to himself—that is, Hans and Herbert?
Mr. WARNHOLTZ. Fix the time, please.
The WITNESS. Yes, sir.

By Mr. WOLL:

Q. About when was that, about when would that be?

A. That was the Sunday.

Q. What did he say about that?

A. He was saying that Herbie was a good boy; that he was too young to die. He repeated that over again, he was too young to die; and he says if it was not for a fellow he knew at work that this would not never happen; and he began talking about Herbie's life in Chicago, and telling how he left the country.

Q. What did he say about that?

A. He says that Herbie always wanted to go to Germany; it was his intention since he was a little boy; he always wanted to go; when this war broke out that he wanted to join the German army; and he asked him for money to go on a trip to Germany,

894 but Mr. Haupt did not have the money—could not give it to him.

So then he told them how he misses his son, and he did not hear from him for a month, until he received a letter from Mexico telling him that Herbie, his son Herbie, was on his way to Germany.

Q. All right; what else did he say?

A. Then he told how he next heard from Herbie from Tokyo—received word from Tokyo.

He said: "I did not see him—I did not see him for a long time."

He said: "One night I was notified to go to my relatives' home and when I went there" he said, "I was scared and surprised because Herbie was there."

Q. Did he mention the relatives' name?

A. Froehling.

Q. What did he say about after he got there?

A. He says when he seen Herbie he was scared; he was scared because the FBI agents and the Selective Service Board was looking for him for his failure for not reporting for his classification.

And he told me he advised him to go to the Selective Service Board and Herbie agreed to go with him—to go with him, and his dad was scared.

Q. Did he tell you this?

A. Yes, sir.

895 Q. Where?

A. He is talking. He is talking to Hamby, and I hear, listening, and he said that he was scared of Herbie coming home. Herbie he told me—that Herbie did not—could not stay home long, but he wanted to stay home until he got his car; after he got a car he would not stay home at all.

Q. Did he say anything else about what Herbert told him?

A. Yes. Mr. Haupt told us how Herbie came on a submarine

to the United States from Germany; that he came with some fellows that landed in Florida; and when they landed in Florida that he went with another fellow to Chicago, and they was on the go every minute.

Q. Did he say that Herbert told him anything at all about what he did in Germany?

A. Yes, sir. He said Herbert visited his—some friends, some relatives, and he met one friend of his who was in the German army and who was enlisted in the chemical school and that Herbie joined this chemical school when he was in Germany.

Q. Did he say anything further about this chemical school?

896 A. Yes, sir. He said this school was a branch of the German Army, where they taught the use of explosives.

Q. Did he say anything at all about explosives? I say, "he" meaning Hans Haupt?

Mr. BERTRAM. I think the question is leading.

A. Not at that time.

By Mr. WOLL:

Q. Not at that time?

A. No, sir.

Q. Did he later say anything about explosives?

Mr. BERTRAM. I object to the leading question.

The COURT. Overruled. He may answer the question.

A. I did not get your question.

By Mr. WOLL:

Q. Did he say anything later, did he say anything to you about Herbert telling him anything about explosives?

A. Yes, sir.

Q. When do you think that was?

A. It was about two o'clock in the morning, Monday morning.

Q. What did he say?

A. He said he was scared of Herbie because Herbie was here for no good reason.

I asked Mr. Haupt: "What do you mean?"

897 And he said: "He is here—he is here with these—with this other fellow—" he mentioned a name I cannot recall. And that they came to this country with explosives to do damage to this country, and he mentioned how.

Q. Is that what he said Herbert told him?

A. Yes, sir.

Q. All right.

A. Yes, sir.

Q. What else did he say Herbert said or did about his arrival in Chicago?

The COURT. How much longer will your direct take?

Mr. WOLL. I do not think it will take more than five minutes.

The COURT. I think we had better recess at this time until ten o'clock tomorrow morning. Ten o'clock tomorrow morning.

(Whereupon an adjournment was taken to Friday, June 2, 1944, at the hour of 10:00 o'clock a. m.)

898 In the District Court of the United States for the Northern District of Illinois, Eastern Division, at Chicago

UNITED STATES OF AMERICA

vs.

HANS MAX HAUPT

Before Hon. JOHN P. BARNES, Judge and a Jury

Friday, June 2, 1944, 10:00 o'clock a. m.

Court met pursuant to recess.

Counsel present: Mr. J. Albert Woll, United States District Attorney for the Northern District of Illinois, Eastern Division, at Chicago, and Mr. Earle C. Hurley, and Mr. Richard G. Finn, Assistant United States District Attorneys for the Northern District of Illinois, Eastern Division, at Chicago, appeared for the United States of America; Messrs. Paul A. F. Warnholtz, Frederick J. Bertram, appeared for the Defendant.

* * * * * *

899 The COURT. Bring in the jury.

(Thereupon the following proceedings were had in the courtroom, in the presence and hearing of the jury.)

The COURT. Good morning, ladies and gentlemen.

The JURY. Good morning.

The COURT. Proceed, gentlemen.

Mr. WOLL. You may sit down; sir.

JOHN MAJERCZAK, resumed the stand for further examination, after having been previously sworn, was examined and testified as follows:

Direct examination (resumed) by Mr. WOLL:

Q. Mr. Majerczak, you are the same Mr. Majerczak who was testifying yesterday when we adjourned court, are you not?

A. Yes, sir.

Q. Now, yesterday you stated, I believe, on a Sunday, which you figured at some time about August 6th or 8th, that Hans Haupt

told you that Herbert Haupt had told him he came to this country in a submarine; is that correct?

A. Yes, sir.

900 Q. Did he say anything else about how he came here in a submarine?

A. Yes, sir. He said that he told how Herbie told him that he landed with a group of men in a rubber raft—in a rubber raft and they had a change of clothing and explosives and after they landed they hid, that they changed clothes and hid the explosives and other clothing they put in a hole they dug in the sand.

Q. Did he say whether or not Herbert Haupt had anything else besides explosives and change of clothing?

A. Yes, sir; during that conversation he told about money.

Q. What did Hans Haupt tell you that Herbert told him about money?

Mr. BERTRAM. Objection; leading the witness.

The COURT. He may answer.

Mr. WOLL. I don't think I have been leading him. He said he talked about money.

Mr. BERTRAM. He did not say that; you said that in your question. He made the statement that Herbert had told him about money which is a leading question and I object to that.

The COURT. Sustained.

901 By Mr. WOLL:

Q. Was anything said by Hans Haupt, about money?

A. Yes, sir.

Q. What was said?

A. I already told you yesterday he said he was accused of receiving money, German money.

Mr. WOLL. Yes.

The WITNESS. And later during his conversation he told how his son gave him money in this home, and later his son asked him to purchase an automobile for him——

Mr. WOLL. Yes.

The WITNESS (continuing). He gave him one thousand dollars out of a money belt to buy the car for him.

Q. You say he later gave him one thousand dollars; what did Hans Haupt say about that giving of the one thousand dollars?

A. He said he was called to Mr. Froehling's home one night to come over there. He met his son Herbert and he told Herbie about one of the agents looking for him and wanted him and he was scared on seeing his son in Chicago, knowing he came from Germany, so his son told that he did not intend to stay home long and all he wanted was a car from his dad and he gave

902 Mr. Haupt—told how he gave him money.

Q. Who gave who money?

A. Herbie gave his dad money.

Mr. WOLL. I see.

The WITNESS (continuing). And Mr. Haupt told how he hid this money underneath a rug so that Herbie gave him money out of a money belt to buy a car.

Mr. WOLL. What you are telling me now is what Hans Haupt told you?

A. Yes, sir.

Q. Now, to go back to my original question, did Hans Haupt say anything as to whether Herbert told him that he arrived in this country with anything else other than the explosives and a change of clothing?

Mr. BERTRAM. I object to leading the witness, your Honor. The proper way for him would be to ask for conversations, not lead the witness. He is directing his attention.

The COURT. Yes, objection sustained, ask him what if anything else Herbert told him he brought with him.

By Mr. WOLL:

Q. What if anything else did Hans tell you Herbert told him he brought with him from Germany?

963 A. Oh, Mr. Haupt told me that Herbert brought money, explosives, and change of clothing.

Mr. WOLL. All right.

Q. Was anything further said to you or you to him in your presence on that occasion about money?

Mr. BERTRAM. I will object to the double question, your Honor. Certainly the last part is improper, what was said to somebody else.

Mr. WOLL. In your presence.

The COURT. Overruled.

The WITNESS. Well, all Mr. Haupt said about money, he told that Herbie gave him a sum of money, which he mentioned, which I cannot recall now, and that he hid this money for his son.

By Mr. WOLL:

Q. You don't recall the amount?

A. No, sir; it was thousands of dollars. I know that.

Mr. WOLL. I beg your pardon?

A. It was thousands of dollars.

Q. Is that what Hans told you?

A. Yes, sir; he gave me figures. It was in the thousands. I cannot remember exactly.

Q. Was there any further conversation that you recall in your presence with Hans Haupt about an automobile?

964 Mr. BERTRAM. I object to leading the witness again.

Mr. WOLL. May I make the observation, if your Honor

please, that this witness already testified about an automobile; I am merely directing his attention to that subject, rather than words, that is all.

The COURT. Let him answer.

The WITNESS. Well, Mr. Haupt told me that he purchased an automobile for his son.

By Mr. WOLL:

Q. Did he say anything else in that talk?

905 A. No, sir. He says Herbie wanted an automobile to get around in, and that he purchased an automobile for him from the money Herbie gave him to purchase this car. That is all I recall.

Q. To refresh your memory, was anything said about the manner he purchased it in; how it was purchased?

Mr. BERTRAM. I object to refreshing his memory.

The COURT. Yes; he should be asked if there was anything else that was said. Well, he may answer that question.

The WITNESS. No, sir; he did not tell me how he purchased it. He just said Herbie gave him the money to purchase the car and he purchased it.

Mr. WOLL. All right.

Q. Do you recall any further conversations that you had with Hans Haupt in the County Jail at or about the time you mentioned, or any further conversation that Hans Haupt may have had with anyone else in your presence?

A. This conversation I was referring to the last few minutes had been done Sunday, which was the 8th or 9th of August, and I did hear of conversations Mr. Haupt had with Carl Hamby, not on that date.

Q. Will you place them, other conversations, the best you can?

906 A. Well, I should judge that week after Mr. Haupt was there he held a conversation with Carl Hamby and talked about explosives.

Q. Yes; what did he say?

A. Mr. Haupt was comparing the explosives that had been in the northeast part of the United States during the last war, and he was telling him that this war was more destructive and in using those explosives they had in the northeast corner of the United States, for example, he says that was nothing as compared with what would happen in the second war, and then Hamby and Mr. Haupt were talking about Germany and comparing Germany with the United States, and Mr. Haupt told how hard it was for him, when he came to this country, and during the depression, the only job he could get, he was able to get anything, was a WPA and he says in Germany there is no such thing as WPA, because

every able-bodied man can get a job and work and earn an honest living, and he said, this country is run by Jews, and he gave Hitler, for example, that Germany is run by white people and not for Jews. And he says at that time that Hitler was the best man that Germany had since Bismarck, and that is all I can recall of that conversation.

907 Mr. WOLL. To refresh your recollection on that line, was anything said as to any future plans of Hans Haupt as to where he would live?

Mr. BERTRAM. Now, I think that is particularly vicious on the part of the District Attorney to lead the witness, as he has throughout this examination and he is doing it again and again.

The COURT. Objection sustained.

By Mr. WOLL:

Q. Was anything further said about Germany or America that you recall?

A. During that conversation, Mr. Haupt told Hamby he was talking about this country, how hard it was for him even to earn an honest living without applying for charity. He says that when this war would be over, that he intended to return back to Germany.

Q. Now, Hans Haupt, when he engaged in the conversations you have mentioned, in which he told you the things that Herbert said to him, did he place a time at all when Herbert told him these things?

A. He talked——

Mr. BERTRAM. I object to leading again, if the court please.

The COURT. I don't think he is leading.

The WITNESS (continuing). The only time he mentioned
908 a particular time was Sunday when he talked about—when he met his son the first time in Chicago when he came from Germany.

By Mr. WOLL:

Q. So that we will all get this straight, this matter was all talked about on Sunday?

A. Yes, sir.

Q. He mentioned talking to Herbert when?

Mr. BERTRAM. I object; just a minute.

The WITNESS. He said the first day that Herbie came to Chicago and he did not say the date, he didn't know the date he came to Chicago, and he mentioned the first date.

By Mr. WOLL:

Q. Did he say where that conversation took place?

A. Yes, sir.

Q. Where did it take place?
A. It took place in Mr. Froehling's home.
Q. Did he say who else was there?
A. He mentioned Mr. Froehling, Mr. Wergin, their wives and other names I cannot recall.
Q. Did he mention Mr. Wergin in connection with being at the home, or did he mention his name during the conversation?
A. He mentioned his name during the conversation.

Mr. WOLL. Cross-examine.

909 Mr. BERTRAM. If the court please, I would like to move to exclude all of the testimony of this witness on the objections I previously made, statements not in open court by the defendant in this case, and also as to all statements made regarding overt acts.

The COURT. Denied.

Cross-examination by Mr. WARNHOLTZ:

Q. Mr. Norris, what is your right name?
A. John Majerczak.
Q. You were called Norris by your friends?
A. Sir?
Q. You were called Norris by your friends?
A. No, sir.
Q. What did they call you Stanley?
A. No, sir. My friends called me John.
Q. What is the name; Majerczak?
A. M-a-j-e-r-c-z-a-k.
Q. How many times have you been convicted of committing crimes?
A. Three times.
Q. When was the first time?
A. In 1930.
Q. How old were you then?
A. Seventeen.
Q. And what is it you were convicted of; what particular crime at that time?
A. Riding in a car with other boys without the owner's consent.

910 Q. And what was the sentence?
A. One year in Pontiac Reformatory.

Q. Now, the second time?
The COURT. What was the sentence?
The WITNESS. One year.
Q. One year?
A. Yes, sir.
Q. In Pontiac?
A. Yes, sir.

Mr. WARNHOLTZ:

Q. And the second time, what was it then?
A. Robbery.
Q. In what year was that?
A. 1930.
Q. Also in 1930?
A. 1929 I was convicted.
Q. 1929 you were convicted of riding in an automobile without the owner's consent?
A. Yes, sir.
Q. In 1930, it was robbery?
A. Yes, sir.
Q. What type of robbery was it?
A. I was charged with armed robbery.
Q. Hold-up?
A. Huh?
Q. Was it a hold-up?
A. Yes, sir.
Q. With a gun?
A. No, sir; I didn't have no gun.
Q. Were you alone; did you commit the crime alone?
911 Mr. WOLL. If your Honor please, he is talking about a conviction, not whether he actually committed a crime.
The COURT. The question is whether or not he had been convicted of a felony.
Mr. WOLL. And he wants to know now whether he committed the crime alone.

By Mr. WARNHOLTZ:

Q. Were you alone when the crime was committed?
The COURT. Sustained. The only question is whether or not he was convicted of a felony, and he said he was.
Mr. WARNHOLTZ. If your Honor please, I would like further to find out the character of this man, just what the crime consisted of.
The COURT. Objection sustained. I didn't hear any objection, but it is sustained anyway.
Mr. WOLL. I did object as to the question.
The COURT. Sustained.

By Mr. WARNHOLTZ:

Q. What was the sentence at that time?
A. One to twenty.
Q. How is that?
A. One year to twenty years.
Q. Also in Pontiac?
A. Yes, sir.

Q. And after that you again were sentenced for the
912 commission of some crime?

A. I was paroled and I was sentenced also.

Q. You were paroled on that one to twenty years?

A. Yes, sir.

Q. When were you paroled on that?

A. 1934; in September.

Q. And between 1934 and 1941, did you again have some trouble with the law?

A. I was sent back. I violated my parole by leaving the County to go to Grant Park, Illinois, and I was sent back to Joliet for a parole violation.

Q. And what year was that?

A. That was in 1940.

Q. 1940?

A. Yes, sir.

Q. And after that, what was the next crime you were accused of?

A. I was released from jail for robbery in 1942.

Q. You were released for robbery?

A. No; you see, it was my return——

Q. Was that robbery with a gun?

The WITNESS. What am I answering now?

Mr. WARNHOLTZ. I don't know. The last one is the one in 1942.

The WITNESS. You want me to answer about my being
913 released from Joliet?

Q. All right. Answer that.

A. I don't understand your question.

Q. When were you released from Joliet, then?

A. When was I released?

Q. Yes.

A. July 3, 1941.

Q. And you are now in the Statesville Penitentiary at the present time?

A. Yes, sir.

Q. When were you sent there?

A. I was convicted April 10, 1941, and sent to Joliet October 13, 1942. I was convicted and sentenced and went to Statesville—no; October 13, 1942.

Q. What were you convicted of?

A. Robbery.

Q. With a gun?

A. Yes, sir.

Q. And what was your sentence?

A. Life.

Q. Where were you held between the time you were first appre-

heeded on that particular crime and the time you were sent to the Statesville Penitentiary; where were you held, in the County Jail?

A. Yes, sir.

Q. During all that time?

A. Yes, sir.

Q. Do you know a party by the name of Hamby?

914 A. I do.

Q. Was he involved in this same crime of which you were convicted in the summer around October 13th, 1942?

Mr. Woll. I object, if the court please, whether he was involved in the same crime.

The Court. Sustained.

By Mr. Warnholtz:

Q. Did you have a codefendant in that particular crime?

A. Yes, sir.

Q. When you were tried?

A. Yes, sir.

Q. One or more, or more than one?

A. With three fellows.

Q. Three fellows; one of them is named Hamby?

A. Yes, sir.

Q. And that is the man to whom you referred before when you were being asked that question by Mr. Woll?

A. Yes, sir.

Q. You stated that on or about July 22, 1942, if I remember the date correctly, you were removed in the County Jail to Tier H-4, was it?

A. That is right.

Q. Where had you been held prior to that time?

A. What?

Q. Where had you been held prior to that time?

915 A. B-1.

Q. B-1?

A. Yes, sir.

Q. At the same time was Hamby removed with you, too?

A. He was removed about a half hour from the time I was.

Q. Also from B-1?

A. No, sir.

Q. He was in a different part of the jail prior to that?

A. Yes, sir.

Q. And he was removed to Tier H-4?

A. Yes, sir.

Q. At or about the same day?

A. Yes, sir.

Q. Do you know why you were sent up there?

A. No, sir.

Q. Before you got up to Tier H–4, had you heard about this Haupt case?

A. Yes, sir.

Q. You did not read any newspapers in jail, did you?

A. I did.

Q. You did not read about this case, did you?

A. No, sir.

Q. Did any of the jail guards tell you that you were going to go to that tier, and there was a very dangerous man there?

A. Not while I was on B–1; no, sir.

916 Q. Well, did they tell you later on?

A. The night I went to H–4, Mr. O'Malley, night superintendent, told Hamby and I that we were among good people, a spy and saboteur of big character. He did not mention the name, just a spy and saboteur.

Q. Did he say one of them or a number of them?

A. No; he said one of them.

Q. One of them?

A. Yes, sir.

Q. What did you tell him then?

A. I didn't tell him that; he told me that.

Q. Did you answer anything?

A. No, sir.

Q. Did Hamby answer anything?

A. We were locked up as soon as we got there.

Q. You were locked up in a cell; what was the number of your cell?

A. Number 8.

Q. And that was about thirty-five feet away from the cell where Hans Haupt was locked up?

A. Approximately; yes, sir.

Q. In what cell was Hamby locked up?

A. He was in Cell 4.

Q. Cell 4?

A. Yes, sir.

Q. How far away was that from Hans Haupt's cell? Well, how many feet?

A. Ten or twelve feet.

917 Q. And how far was Hamby's cell from your cell?

A. Twenty-five to thirty feet.

Q. So Hamby's cell was between your cell and Haupt's cell?

A. Yes, sir.

Q. Did you know that Hans Max Haupt had a trial for the crime of treason in October or November 1942?

A. No, sir.
Q. You never heard about that?
A. Mr. Haupt never told me—used that word; no, sir.
Q. Mister who?
A. Mr. Haupt never used that word "treason."
Q. Well, did you know that Haupt was going to have a trial about that time?
A. No, sir.
Q. Or that he did then have a trial?
A. No, sir.

Mr. WOLL. I will have to object to that, if your Honor please, because this man testified to some conversations between July 21 and August sometime of 1942, and now this question asked is whether or not he knew he had a trial about that time.

The COURT. Well, he answered that; overruled.

By Mr. WARNHOLTZ:

Q. You had not heard about that?
A. No, sir; nothing about a trial.
918 Q. You didn't testify in that particular trial, did you, Mr. Majerczak, on that trial in October of 1942, of Hans Max Haupt?
A. Of October 1942?
Q. Yes.
A. Yes, sir; I do not remember the date I testified once before, but I don't remember what date.
Q. You testified once before; about how long ago was that?
A. Approximately two months ago.
Q. Approximately two months ago?
A. Yes.
Q. When did you last see Hans Max Haupt in the County Jail?
A. When was the last time?
Q. The last time you saw him there, when was that?
A. I saw him this morning.
Q. In 1942, before you and Hamby were sent to the State penitentiary, when did you last see him there?
A. The last time?
Q. Yes.
A. The fourth day after I went in H–4.
Q. About four days after you went to H–4?
A. Yes, sir.
Q. Then you didn't see him again?
A. Yes; I saw him later on. I saw him this morning.
919 Q. I understand, but in 1942, before you were sent to the State penitentiary, when was the last time you saw him?
A. The fourth day I was on H–4.

Q. That was the last time, the fourth day?
A. Yes, sir.
Q. When did you get to H–4?
A. Around the 21st or 22nd of July.
Q. Four days later, that would be about the 26th or 27th of July?
A. Yes, sir; about that.
Q. Did you see him after that again at that time?
A. You mean on H–4?
Q. Yes.
A. No, sir.
Q. Where did you see him after that; the next time you saw him again, where was he?
A. I saw him this morning in the County Jail.
Q. You didn't see him after July 26th, 1942, in the County Jail, up until about two months ago?
A. I saw him in court.
Q. Yes, but up to two months ago, you didn't see him after July 26, 1942?
A. In July, in July—just a minute now. No sir.
Q. About August the 1st or 2nd, 1942, did you see
920 Hans Max Haupt in the Cook County Jail?
A. What date is that?
Q. August 1, 1942.
A. August 1, 1942?
Q. Yes.
A. No, sir.
Q. August 5, 1942?
A. No, sir.
Q. August 8th or 9th, 1942?
A. No, sir.
Q. You saw Hamby give a newspaper, the Sunday Times, on August 8th or 9th, 1942, to Haupt, did you not?
A. No, sir.
Q. Did you hear of Hamby giving such a paper to Haupt?
A. Yes, sir.
Q. When did he tell you that?
A. Sunday, August 8th or 9th.
Q. Where were you then?
A. H–4.
Q. Where was Haupt at that time?
A. H–4.
Q. Could you see him from your cell?
A. No, sir.
Q. Did you talk with him after August 1, 1942; did you talk to Haupt after August 1st, 1942, before you saw him again here in court two months ago?

A. August 1—will you please ask that question again?

Q. Did you talk to Hans Max Haupt again after the 1st
921 day of August 1942, and prior to the day when you saw him in court here two months ago?

A. On August 1, 1942, to the day I saw him on the sanity trial; yes, sir, I saw him. No. Just a minute. No, sir.

Q. Did you talk to him between August 1, 1942, and August 10, 1942?

A. Yes, sir.

Q. Where?

A. On H-4. I talked to him, either that was Sunday, August 8th or 9th, 1942.

Q. You did not see him; you just talked to him?

A. No, I did not see him.

Q. But you talked to him?

A. Yes, sir.

Q. That was the day when you carried on this conversation with him concerning which you testified yesterday and today?

A. Part of it; yes, sir.

Q. Part of it?

A. Yes, sir.

Q. Did Hamby participate in that conversation?

A. Yes, sir.

Q. Did you see this newspaper, the Times, the Sunday Times, before Mr. Hamby gave it to Mr. Haupt?

A. No, sir.

Q. Did Mr. Hamby tell you what was in there?

A. No, sir.

Q. Regarding Mr. Haupt?

A. No, sir.

922 Q. Did Mr. Haupt tell you what he saw in the paper?

A. Yes, sir.

Q. What did he say?

A. He said, "They killed Herbie."

Q. He saw that in that particular newspaper?

A. Yes, sir.

Q. Did Mr. Hamby tell you what Mr. Haupt paid him for that newspaper?

A. Yes, sir.

Q. What did he pay him for that newspaper?

A. Hamby told me Mr. Haupt gave him $5.

Q. For that newspaper?

A. Yes, sir.

Q. Did Mr. Hamby tell you he knew what was in the paper before he gave it to Haupt?

A. No, sir.

Q. You did have a conversation with Hamby about that?

A. Yes, sir.

Q. What was that conversation?

A. Hamby received a paper for Haupt, it was Sunday the 8th or 9th, from a guard.

Q. Did you see him receive it?

A. No, sir. He told me that a few minutes later.

Q. Go ahead.

The WITNESS (continuing). And he immediately handed
923 it over to a fellow—a colored fellow, rather, came in—and Mr. Haupt—that is, Mr. Haupt was reading this paper—reading this paper—and all the fellows knew that the paper come up, and they wanted to see it next, for all papers that come to the Cook County Jail are censored and cut; any article about any inmate in there, it is cut out.

Q. How do you know Haupt was reading the paper; did you see it?

A. I heard Hamby ask him for it.

Q. You heard what?

A. Hamby asked for the paper.

Q. Was this a censored paper?

A. No, sir.

Q. How do you know that Haupt paid Hamby five dollars for that paper?

A. Hamby told me.

Q. What did he tell you?

A. He told me Mr. Haupt stated the Evening American he ordered by the week. He was always angry that the paper was tore up and articles clipped out, and he asked Hamby why they do that, and Hamby told him that they censored all articles concerning any inmate in the County Jail.

Q. You heard Hamby tell this to Haupt?

A. Yes, sir; I heard him ask questions. He asked
924 Hamby if Hamby could get him a complete paper that was not censored, and Hamby said it was hard, but he would try.

Q. You heard that conversation, too?

A. I heard that; yes, sir.

Q. And then what happened?

A. Well, it was Saturday; that conversation was Sunday, and I heard that Hamby got the paper.

Q. From whom did you hear it?

A. From Hamby himself.

Q. When did he tell you anything about the $5, when was that?

A. That Sunday when he received that paper, about one hour later.

Q. What did Hamby say?

A. He told me he had a sheet.

Q. He had a what?

A. A sheet, an uncensored sheet, and he said to him——

Q. Then what did he say about the $5?

A. He said it cost a fin.

Q. It cost who a fin?

A. It cost Hamby.

Q. What did he say about Haupt paying this $5?

A. One hour after he received the paper.

Q. He said he got the money from Haupt?

A. Mr. Haupt said he gave it to the guard.

925 Q. Do you know whether or not Haupt paid the money when he got the paper or after he got the paper?

A. I don't know that.

Q. Did Hamby tell you he got the $5 first?

A. I couldn't answer that. All I know is, Hamby received $5 from Mr. Haupt to get him a non-censored Sunday paper, and he got it for him.

Q. Did you talk with Haupt after he read this newspaper?

A. Yes, sir.

Q. On the same day?

A. Yes, sir, about two hours or three hours later.

Q. How many more inmates were in that tier who could freely talk with Mr. Haupt the same as you could?

A. All of them.

Q. How many?

A. Eight.

Q. Eight?

A. Yes, sir.

Q. And they all knew about Haupt getting this paper, did they?

A. Well, if they were listening, they couldn't help but hear it. If they were not listening—I don't know whether they were listening or not.

Q. Listening to what?

A. That conversation where Hamby was telling me about the paper.

926 Q. You didn't hear it, though?

A. What?

Q. You didn't hear that conversation, did you?

Mr. WOLL. I object. The conversation is going off to something else. We were talking originally about other people hearing some of the things this witness stated, if they were listening.

and this latter question to my mind has no relation to what has preceded it.

The COURT. What do you want to know?

Mr. WARNHOLTZ. I want to show this man is not telling the truth, what he stated here.

The COURT. Not your ultimate desires, but what do you want to know from him now.

Mr. WARNHOLTZ. Will you read the last question?

(The last preceding question read by the reporter.)

By Mr. WARNHOLTZ:

Q. The conversation asked him for a paper.

A. I did hear that conversation.

Q. You heard it?

A. Sure.

Q. Then you got that knowledge, not from Mr. Hamby, but by hearing it?

A. I heard Mr. Haupt ask Hamby if he could get a not
927 censored paper and Hamby said it was hard, but he would try to get him one. That was Saturday. I already stated that previously, and after, when he received the paper about 4:30 Sunday, Hamby told me that he got the Sunday paper for Mr. Haupt, he gave it to him, and he told me that on Saturday I heard Mr. Haupt asking for it.

Q. Saturday you heard him ask for it?

A. Yes, sir; to make arrangements with Hamby to get this paper.

Q. Did you hear Hamby tell him it would cost him $5?

A. Sir?

Q. Did you hear Hamby tell him it would cost him $5?

A. No, sir; Saturday Mr. Haupt asked Hamby to get a paper, and he says to Hamby, "What was it going to cost me?" And Mr. Haupt asked him "How much," and Hamby said he did not know, and Sunday, when the officer came with the paper——

Mr. WARNHOLTZ. Go ahead.

The WITNESS (continuing). Mr. Hamby got $5 from Mr. Haupt and paid him.

Q. How do you know?

A. Because Hamby told me.

Q. Did you see Mr. Hamby take that newspaper from the guard?

A. No, sir.

928 Q. Do you how soon after he got it he turned it over to Mr. Haupt?

A. No, sir.

Q. Did any of the other inmates read that paper before Mr. Haupt got it?

A. No, sir.

Q. Did Mr. Hamby tell you what was in that paper before he turned it over to Mr. Haupt?

A. No, sir.

Q. Did he tell you—did he tell that to any of the other inmates?

A. No, sir.

Q. You know now what that paper contained regarding the Haupt case?

A. Yes, sir.

Q. What did it contain?

A. Mr. Haupt told me that Herbie was killed, Herbie, Herbie, Herbie got the chair, got killed, my son—I knew it was his son was electrocuted, and he knew it was in that paper about that.

Q. Did Hamby tell you he knew that news was in the paper before he gave it to Haupt?

A. No, sir.

Q. When you first got to that tier, that was about July 22, is that right, when you first got up there to tier H-4?

929 A. You said July 22?

Q. Yes, July 22.

A. Yes, sir.

Q. Did you see Haupt then?

A. No, sir.

Q. Did you ever see him?

A. Yes, sir.

Q. Over there?

A. On H-4?

Q. Yes.

A. Yes, sir.

Q. On what occasion did you see him?

A. I seen Mr. Haupt once when I was taking a shower.

Q. When you were taking a shower?

A. Yes, sir.

Q. Did you have to pass his cell?

A. No, sir. Mr. Johnson, the superintendent, brought Mr. Haupt out to take a shower next. The door was open. I was taking a shower then. I saw Mr. Haupt talking to Mr. Johnson. Mr. Johnson was telling Mr. Haupt to get ready for his bath and Mr. Haupt was reluctant and Mr. Johnson told him if he didn't take a bath, he would take a bath with his clothes on or off, and I said, "Haupt, you better take a bath." And then he said, "I am going to throw you in with your clothes on or without."

Q. What mental condition was Haupt in at that time, was he scared?

A. Well, he was scared; scared of what, I don't know what.

Q. Scared of what?

930 A. He acted like he was scared to take a shower, that is all.

Q. And that is the only time you saw him there?

A. Yes, sir.

Q. All this conversation you had with him was by talking very loudly, so that he could hear you thirty-five feet away?

A. No, not a bit louder, like I am talking now.

Q. Were you allowed to talk to the other prisoners in other cells?

A. We are allowed to talk all day and all night. The lights never went out. We always were talking.

Q. Had you been told that Mr. Haupt attempted to commit suicide shortly after you got to tier H-4?

A. The second day [July 22, 1942] I was there, a guard came walking down the corridor with a reddish necktie in his hand and said, "Look, that fool tried to hang himself with this."

I said, "Mr. Haupt?" "That fool, Mr. Haupt, tried to hang himself with this, and I pulled him off from the bars."

Q. He pulled him off the bars?

A. Yes, sir.

Q. Had you been told he tried to commit suicide before?

A. No, sir.

931 Q. At the time when he was about to take his bath was his hand bandaged?

A. No, sir.

Q. Was there a story circulated to scare Hans Haupt among the inmates on this tier, to scare him, did you tell him you were going to kill him because he was a spy?

A. No, sir.

Q. Did anyone say that?

A. No, sir.

Q. That you were going to dismember his body and smuggle it out in newspapers?

A. Nobody told him that; no, sir.

Q. Did anybody appear to have hostile feelings toward him being a spy and saboteur or something?

A. No, sir; showed him sympathy.

Q. The only one that told you he was a bad man was that assistant superintendent?

A. Yes, sir.

Q. They all showed him sympathy?

A. Yes, sir.

Q. When you talked to Mr. Haupt about his son returning from Germany in the submarine, et cetera, how long did that conversation take?

A. That conversation took about one hour.

Q. One hour?

A. Yes, sir.

932 Q. In the morning, at noon, or afternoon; when was it?

A. That was 9 o'clock that evening.

Q. In the evening?

A. Yes, sir. Sunday.

Q. And you were thirty-five feet away from him?

A. Yes, sir.

Q. Did the other inmates participate in that conversation?

A. They were listening; some were listening; yes, sir.

Q. Did you do any talking?

A. Yes, sir.

Q. Was he talking to the others, too, or just to you?

A. I asked him a few questions.

Q. What questions did you ask him?

A. I asked him about Herbie.

Q. What did you ask him?

A. I told him not to feel bad about his son.

Q. What did you ask him?

A. I asked him how he felt.

Q. How who felt?

A. Mr. Haupt.

Q. What did you ask him about Herbie?

A. I asked him, and he told me Herbie was killed, they killed Herbie.

Q. What did you ask him about Herbie?

A. Who killed Herbie.

Q. You asked him, who killed Herbie; did you ask him

933 anything about that story coming from Germany to here?

A. No, sir; he was telling me.

Q. He was telling the whole story without your talking to him?

A. At the beginning, I asked him, who killed Herbie, and he said, "They killed Herbie;" he said, "Herbie, they killed Herbie in the chair."

Q. Then he started telling the entire story?

A. Then he began talking; yes, sir.

Q. He began to talk?

A. Yes, sir.

Q. Did anybody else ask him questions at the time?

A. Yes; Hamby.

Q. What did he ask him?

A. I can't recall just exactly.

Q. You do not remember; do you know the substance?

A. Yes, sir; oh, about how a man can leave his country; Mr. Haupt, how a man can leave the country during the time of war.

Q. Then it was upon answering that question that Hans said that he left by submarine?

A. No, sir.
Q. What did he answer?
A. I don't recall the answer to that question.
Q. What else did Hamby ask, anything?
A. You asked for the substance, and that was the substance of the conversation.
934 Q. And that was the entire conversation between Hamby and Hans Haupt?
A. No, he interrupted a few times with other questions.
Q. What were the other questions?
A. I cannot recall.
Q. You only recall the answers Hans Haupt, of Hans Haupt, do you?
A. I told you the substance was that conversation about leaving the country, and he asked him that question.
Q. Do you recall anything else, but that one question asked by Hamby?
A. That is the only question I can recall Hamby asked him; yes, sir.
Q. You stated that Hans Haupt told you this story?
A. Yes, sir.
Q. About coming from Germany to so and so?
A. Yes, sir.
Q. And coming to the United States in a submarine?
A. Yes, sir.
Q. Do you know what caused him to tell that story to you?
A. No, sir.
Q. You don't know why?
A. No, sir; no, sir.
935 Q. Was there anybody else across the aisle from him in some cell?
A. No, sir.
Q. Were the cells all on one side?
A. They are all on one side.
Q. Who was his next neighbor?
A. A colored fellow.
Q. A colored fellow; then you came next?
A. No, Hamby.
Q. After Hamby, you came then?
A. No; a fellow by the name of Anderson.
Q. Did he talk to Anderson; did he talk to Anderson?
A. Anderson was a very sick man.
Q. And the next one?
A. Bruno Jackomack was in on sentence to die in the electric chair. He did talk to him, Mr. Haupt, about the electric chair.
Q. Who followed Jackomack?

A. Jackomack?
Q. Yes. Who was next to Jackomack?
A. I was next.
Q. You were next?
A. Yes, sir.
Q. How long was this sick man sick; this sick man you spoke about?
A. He had fainting spells. He always was lying down, and he would faint and fall down always. He wasn't in his right mind, and they sent him to Menard.
936 Q. Over how many number of days did that continue before they sent him away?
A. He stayed there as long as he come there, after we were there; then they sent him to Menard.
Q. He wasn't sick in the hospital, was he, down in the Cook County Jail Hospital in the meantime?
A. Anderson was?
Q. Yes.
A. I don't know.
Q. Do you know where Tokio is located?
A. Tokio?
Q. Where is that located?
A. It is in Asia.
Q. Do you know what country it is in?
A. Japan.
Q. Do you know the name of any other cities in Japan?
A. No, sir; not offhand.
Q. What school education did you have?
A. Two years high school.
Q. Do you know who Bismarck was?
A. Bismarck?
Q. Who was Bismarck; is he a Frenchman or a German?
A. A German.
Q. What was his official capacity, if any; was he a poet?
A. I have to guess at that.
Q. You don't know?
A. No, sir.
937 Q. When did you first hear the word "Bismarck"?
A. I have heard the word "Bismarck" many times in school. I heard it many times.
Q. Now, Mr. Majerczak, how did you get into this case, being called here as a witness?
A. I was visited at Statesville by two Federal Agents.
Q. When?
A. February 19th, 1942.
Q. In February, 1942?

A. No, 1943. No, 1944.

Q. 1944?

A. That is right.

Q. Do you know their names?

A. Mr. Butterworth and Mr. O'Connor.

Q. Do you know how they came to visit you?

A. I know what they told me.

Q. What did they tell you?

A. They came together and they took me into a room and they showed me their credentials and said they were FBI men, and they asked me where I was in July of 1942, and I told them I was in the Cook County Jail.

Q. And then what happened?

A. Well, that was at the beginning.

Q. That was at the beginning.

A. They asked me my name, you know, and all that.

938 Q. Sure, and then what happened?

A. They asked me where was I in July of 1942, and I told them I was in the Cook County Jail.

Q. Did they tell you how they happened to get there, or come there and ask you these questions?

A. No, sir.

Q. Did they tell you what they wanted?

Mr. WOLL. I object, if your Honor please, and I move that the answer be stricken, because it assumes something he said, "Did they tell you how they called there, to ask you these questions?" This witness hasn't been asked any questions. I have been asking him questions in the courtroom, and this witness said nothing about any questions being asked him by any FBI men.

The COURT. Overruled.

By Mr. WARNHOLTZ:

Q. Did they tell you how they happened to contact you and why?

A. No, sir.

Q. Did you ask them?

A. No, sir.

Q. After you told them you had been in Cook County Jail in February 1942, what then did they say, if anything?

A. They asked me, did I have—if I was—if I talked to

939 any of the neighbors on that tier, and who was there.

Q. And what did you tell them?

A. I told them—I named the fellows who were there. I began to tell them about each fellow that was there, and I talked, and what we talked about, and another one of the gentlemen asked me, after I got through talking, regarding what I done, and whom I talked to on H-4, and after I told him what happened on

H-4. and conversations I had. The conversations I was in; then he asked me if I would make a statement what I heard and what I said.

Q. And then what did you say?

A. I told him I would.

Q. Then what did you do or what did they do?

A. I was given a statement of what I told this gentleman and he asked me to sign it and I did.

Q. When did they write that up?

A. Right in my presence.

Q. In longhand or on the typewriter?

A. Longhand.

Q. You did read it before you signed it?

A. I read it.

Q. What was in it?

A. It says that I am telling you this, no duress, under
940 no promise or no expectations, I am giving this information of my own free will of what I talked about and what I told them.

Q. And what else was there in there, in that paper? What else did it say?

A. Just as I testified today.

Q. Of what happened about Herbert coming from Germany what Hans Max Haupt told you about, et cetera; all that was in there.

A. No.

Q. No?

A. There was a statement of about two pages.

Q. Well, what was in it?

A. I don't know now; Mr. Haupt told me about Herbert Haupt leaving this country and going to Germany; how he came back and about money—just what Mr. Haupt told me.

Q. And the WPA, too?

A. WPA; no, sir.

Q. Did these agents ask you the question, "Did Hans Haupt tell you how Herbert came back?"

A. No, sir.

Q. You just told the story?

A. Yes, sir; they asked me to tell them if he was on that tier; if I took any part in that conversation; do I know who
941 was up there. I told them as I was talking to the gentleman was writing then.

Q. Who else was present?

Mr. WOLL. Did he finish the answer? Then what?

The WITNESS. I signed the paper.

By Mr. WARNHOLTZ:

Q. Who else was present?

A. Mr. Butterworth and Mr. O'Connor.

Q. Did they mention Mr. Hamby at the time?

A. I told them about Mr. Hamby.

Q. You told them what?

A. Mr. Hamby was on H-4.

Q. Was he present at the time?

A. No, sir.

Q. Did they tell you they had seen him somewhere?

A. They didn't mention Hamby.

Q. While you were in the Cook County Jail, did you read any newspapers there?

A. Yes; I read newspapers.

Q. Every day?

A. Yes, sir.

Q. You didn't read about the Haupt trial?

A. No, sir.

Q. While you were in the Statesville Penitentiary did you read newspapers?

A. Yes, sir.

Q. Every day?

A. Whenever I got a paper, yes; I would get it from another fellow.

Q. What is it?

A. Not every day; no, sir.

942 Q. Well, two or three times a week?

A. Yes, sir.

Q. Did you read about the Haupt trial?

A. No, sir; no trial, while I was in Statesville.

Q. Where were you on October—between October 26, 1942, and November 16, 1942?

A. I was in the Cook County Jail.

Q. Now to refresh your memory, I believe you said before you were sent to Statesville, sometime in October 1942; is that right?

A. October 13, 1942.

Q. October 13, 1942?

A. 1942.

Q. Well, were you in the Statesville Penitentiary between October 26, 1942, and November 16, 1942?

A. I told you——

Q. Where were you between October 26, 1942, and November 16, 1942?

A. From October to November?

Q. Yes.

A. In the Diagnostic Depot in Joliet.

Q. During all that time?

A. Yes, sir.

Q. Well, that is the Statesville Penitentiary, isn't it; the old part?

A. The old prison.

Q. What did you do there?

943 A. Well, that is the Diagnostic Depot; they send you through physically and they give you typhoid shots and you are examined by doctors. I stayed there from October 13, 1942, until around Christmas; then I went to Statesville.

Q. Did you read any newspapers there?

A. No, sir.

Q. No newspapers at all?

A. No, sir. That is the isolation. You stay in a cell locked up, and you don't do no work, and they feed you in your cell. You are supposed to relax.

Q. After you left the County Jail, when did you see Hamby again; the first time?

A. You mean from October 13, 1942?

Q. Yes; when did you see Hamby next?

A. I seen him at the Diagnostic, when he came to get his meals.

Q. You saw him over there, too?

A. He was locked down in a different cell; he used to get his meals, and I used to see him.

Q. Now, after those two agents got this first statement from you, did you see them again?

A. No, sir.

Q. Don't you remember if you did?

A. No; I didn't see them.

944 Q. What did they tell you when they left?

A. They didn't tell me anything.

Q. How is that?

A. They didn't tell me anything. I signed the statement and they told me good-bye, and they left.

Q. When did you talk about this case again and with whom?

A. After that?

Q. The next time.

A. Oh, I was taken in front of the United States Grand Jury.

Q. When was that?

Mr. Finn. Speak up. It is very difficult to hear you.

The Witness. I was before the United States Grand Jury.

By Mr. Warnholtz:

Q. When was that?

A. Well, that was about one month after these agents saw me.

Q. About March 1944; about?

A. Yes, sir.
Q. Here in Chicago?
A. Yes, sir.
Q. Between the time that these agents visited you and between the time you were taken before the Grand Jury, did you talk with Hamby about this case?
A. No, sir.
945 Q. And after you testified before the Grand Jury did you talk about this case again, when was the next time, and with whom?
A. I talked with Hamby.
Q. When was that?
A. That was when I heard the program on the radio.
Q. How is that?
A. That is when I heard the program on the radio.
Q. When?
A. About March. Just a minute now—about two weeks after I was in the Grand Jury.
Q. When did you hear that program on the radio; where was it?
A. I was in Statesville.
Q. In what part of the jail were you, in the cell, or what?
A. In a cell.
Q. Where was Hamby at the time?
A. He was with me.
Q. In the same cell?
A. Yes, sir.
Q. That is the first time you talked with Hamby about this case after you left the Cook County Jail?
A. Yes, sir.
Q. Was Hamby before the Grand Jury, too?
A. Yes, sir.
Q. Before you appeared before the Grand Jury, you didn't discuss this case together, did you?
A. No, sir.
946 Q. In March 1944, the two of you, Hamby and you were cellmates?
A. March——
Q. That is about four or five months ago?
A. Yes, sir.
Q. You were cellmates; were you taken down to the Grand Jury on the same train?
A. No; same car.
Q. Same car?
A. Yes, sir.
Q. You didn't talk at all what it was all about, did you?

A. No, sir; no, no.
Q. Did you know what you were supposed to do in Chicago?
A. No, sir.
Q. Were you told you should testify before the Grand Jury?
A. No, sir; not until we got here.
Q. What is that?
A. Not until we came into this building.
Q. Did Hamby and you have a discussion as to what you were taken down here for?
A. What do you mean by "taken down here for?"
Q. Well, you were both taken to Chicago, were you not;
947 Hamby and you were both taken to Chicago to testify before the Grand Jury?
A. Yes; that is right.
Q. Well, did the two of you discuss that matter at all as to why you should be taken down?
A. We didn't know where we were going.
Q. What did you say and what did he say about it?
A. All we knew is there was a writ to Statesville to take us to Chicago where we didn't know where we were going. We did not know until after we come in this building, and we were taken direct to the Marshal's office, and the Marshal took us to the Grand Jury, and we took an oath not to tell where we were at.
Q. Did you talk to Hamby after the two FBI agents visited you in February 1944; did you tell him about this visit by the two agents?
A. We were both visited the same day; yes, sir.
Q. You were both visited?
A. Yes, sir.
Q. And then you did discuss the case together, didn't you?
A. We talked about the visit; yes, sir.
Q. Yes; when was he visited, at what time?
A. Same day.
948 Q. After that you discussed the matter together, didn't you?
A. No, sir. Hamby was working on the coal gang, and I was working in a different place. I did not see Hamby.
Q. Didn't you see him at night?
A. No, sir; on a different tier and I was on a different tier.
Q. Was he your cellmate?
A. Not at that time.
Q. When did he become your cellmate?
A. When I was in the cellhouse, where I was working.
Q. You didn't talk about this Haupt case at all?
A. Well, after the Grand Jury?
Q. Before the Grand Jury now.

A. No, sir.

Q. Did you tell him the two FBI agents had seen you?

A. Yes, sir.

Q. Did you tell him what it was about, what they asked you?

A. Didn't ask me anything. I told Hamby that the two agents came down to visit me.

Q. Well, did you tell him what they did ask you?

A. They didn't ask me anything about that; all they asked me to tell what I saw, and what talk was, my talk, and where I was on a certain date.

Q. Did you tell Hamby that; did you tell Hamby what you told those agents?

949 A. No, sir; no, sir.

Q. Did he tell you?

A. No, sir.

Q. Why the agents visited him?

A. No, sir.

Q. Did you have any special reason for keeping it a secret from him?

A. I did not see Hamby until about one month after.

Q. About a month?

A. Yes, sir.

950 By Mr. WARNHOLTZ:

Q. After you appeared before the grand jury and testified, did you talk with any one about this case again? When was the next time?

A. In court here.

Q. How is that?

A. In court.

Q. Is that the next time you discussed the case again?

A. Yes, sir.

Q. Did you talk with Hamby about it before you arrived here in Court?

A. Yes.

Q. Where?

A. In the cell. Hamby and I were talking about what the consequences, what result would happen if we testified in this case.

Q. Before the grand jury you mean?

A. No, after we talked to the grand jury, after. We knew it would be very unfavorable, on our being convicts to give testimony against another man.

Q. Just a moment. When did you have that——

Mr. WOLL. Have you finished your answer?

A. Yes, I did.

By Mr. WARNHOLTZ:

Q. When was your first discussion relating to the Haupt
951 case and with whom did you have it, after you testified before the grand jury?

A. I answered that question before.

Q. Let me have that again, clearly; when was that?

A. That was after we testified before the grand jury, were taken back to the Statesville, and Hamby was telling me that this would be hard against us because we are convicts, by giving testimony in court against another man; it was not right; it would be hard, it was going to be hard against us upon the other convicts.

Q. It would be hard against you where?

A. In Statesville.

Q. In Statesville?

A. Yes.

Q. The other prisoners would not like it, you mean?

A. That is right.

Q. That is what Hamby told you?

A. No, he was saying that it might be there.

Q. Did Hamby tell you it might be bad?

A. Yes.

Q. That was on the way back, later?

A. No, that was in Statesville.

Q. How much later, after you arrived there, a week, a month or what?

A. I would say two weeks after we were in the grand
952 jury.

Q. And then further what did you do? When did you next discuss the case again and with whom?

A. Next we appeared in court.

Q. That was at the sanity hearing?

A. Yes, sir.

Q. Do you know how you happened to appear in court, who called you down there?

A. Hamby and I volunteered, we had information to the government, that we had—we had previous knowledge that Mr. Haupt was not insane; and that he told Hamby and I that he was going to use as a last resort, he would use it, and say that he was insane.

When we heard on the radio that Mr. Haupt's attorney was asking for a sanity hearing—I mean I wrote a letter stating that Mr. Haupt had told me that he would use this as his last resort; that he talked this over with me months before this happened.

Q. And you talked that over with Hamby, whether or not such a letter should be written? Right?

A. Yes.

Q. So you did discuss it before you came to Chicago, did you not, with Hamby?

953 A. It was after the grand jury.

Q. Yes.

A. Before the sanity hearing.

Q. And before, and in between that time——

A. Yes.

Q. In that time you did discuss——

A. Yes, sir.

Q. You said a moment ago you did not. Were you mistaken? Did you——

A. I said before the United States Grand Jury.

Mr. Woll. If your Honor please——

The Court. I am going to insist you be fair to the witness and to the man on trial. He said he did not discuss it, did not discuss it with anybody before the grand jury.

The Witness. That is right.

Mr. Warnholtz. Then that is an honest mistake.

Q. After you appeared before the grand jury and before the time you appeared here in court at the insanity hearing, did you ever discuss this matter with anyone?

A. After the United States grand jury?

Q. After you appeared before the grand jury and before the time that you appeared in this court at the insanity hearing, did you discuss this Haupt matter with anyone?

954 A. I just said about that letter, the only time.

Q. That is the time?

A. Yes.

Q. At the time you discussed this, about the letter, you were a cellmate of Hamby's?

A. Yes, sir.

Q. Who wrote this letter; you or Hamby?

A. I did.

Q. Did Hamby tell you what to write?

A. No, sir.

Q. Was he present when you wrote it?

A. Yes, sir.

Q. Did you show it to him before you wrote it?

A. Yes, sir.

Q. To whom did you send it?

A. Attorney, the United States District Attorney, Mr. Woll.

Q. Did Hamby tell you it might do you some good?

A. No, sir.

Q. He had told you before it might do you some harm if you testified?

A. Among the convicts; yes, sir.

Q. Nevertheless, you thought it was your duty to write the letter; right?

A. Yes, sir.

955 Q. And Hamby agreed with you?

A. Yes, sir.

Q. You say it might do you some harm?

A. With the convicts, yes.

Q. Did Hamby state it might do you some good with the authorities?

A. No, sir; we were in the custody of the state, working on our cases, to appeal our cases. The government has nothing to do with our case, we were convicted for a state crime, and has to go to the state courts.

Q. Did anyone tell you to make that statement, the difference between a federal crime and a state crime?

A. No, sir; because I have been convicted. I have talked to many attorneys about appealing my case.

Q. Now, then, after you wrote this letter, to whom did you give it—to the warden down there or to the guard?

A. To the warden. Hamby gave it to the warden.

Q. Hamby did not sign it?

A. He signed it.

Q. Did you sign it, too?

A. Yes, sir.

956 Q. Did both of you two wri[illegible]—write a combined letter?

A. I wrote the letter, Hamby read it and he also signed it.

Q. Then what happened regarding this matter?

A. He told the officer in charge of our cell house he wanted to see the warden.

Q. Yes.

A. And he was called the next day to see Mr. Ragen.

Q. And then what happened?

A. Mr. Ragen and Mr. Butterworth came to the institution because he had something—this letter he handed to the government.

Q. After this letter was sent, Mr. Majerczak, what happened then? Did anybody see you or did anybody write you a letter about it? What happened?

A. Hamby was visited by Mr. Butterworth.

Q. After the letter was sent?

A. I do not know whether it was sent or mailed or what.

Q. After that time?

A. After the letter; yes.

Q. Mr. Hamby was visited. Were you present at that time?

A. No, sir.

957 Q. Did Mr. Hamby tell you what took place between him and Mr. Butterworth?

A. He told me that Mr. Butterworth was there on a certain day, and he got the letter that I wrote.

Q. What else did Mr. Hamby tell you?

A. He told me about that letter; Mr. Butterworth took the letter.

Q. Do I understand you correctly, that he took the letter?

A. Yes, sir. Mr. Butterworth took the letter.

Q. Did you not say before the letter was mailed out?

A. I said the letter was mailed out?

The COURT. He said Mr. Regan, then he communicated with Mr. Regan to communicate with Mr. Butterworth, who finally got the letter.

Mr. WARNHOLTZ. I did not hear it.

Q. Then what happened after that with reference to this matter?

A. We were taken to the Federal Buildings and brought in court on the insanity trial.

Q. Then you testified in the insanity trial?

A. Yes, sir.

Q. At the insanity trial you did not point out this story that you told today, about Mr. Haupt and Herbert Haupt, did you?

958 A. No, sir.

Q. Do you know why you did not relate that story at that time?

A. It was—I was not asked.

Q. You were not asked that?

A. No, sir.

Q. Were you not asked to tell everything that Hans Haupt had told you at the jail?

Mr. WOLL. If your Honor please, I am going to object to this line of questioning. This proceeding took place in your Honor's court, and you Honor knows what the proceeding was at the time. He has just said he was not asked any questions about that. I think it a waste of time to ask that type of question.

Mr. WARNHOLTZ. I believe that it is an improper statement by counsel, about a waste of time.

Mr. WOLL. Asking if he knew everything until now, about this case——

The COURT. He said he was not asked.

Mr. WARNHOLTZ. May I have the question? Is that question overruled?

The COURT. No.

Q. You were asked to tell everything that Mr. Haupt said out there at the jail which you overheard?

A. He was asking questions—I was asked questions
950 here by the attorney there and I answered every question that he asked, so I do not know. That is all about it.

By Mr. WARNHOLTZ:

Q. Mr. Woll, as far as you remember, never asked about this conversation at the insanity hearing, did he?

A. About what conversation?

Q. About the conversation you had with Mr. Haupt when he talked about his boy coming from Germany and so forth, he never asked you that?

A. He never asked me anything; no, sir; but I was gone to Mr. Woll. I was in front of Mr. Finn and before four or five other gentlemen.

Q. When was that?

A. Oh, that was before this insanity trial.

Q. Here in Chicago?

A. Yes, sir.

Q. Was that at the time when you came down here to testify?

A. Yes, sir.

Q. About the same day or a day before or a couple of days before, is that right?

A. Yes, sir.

Q. And at that time you told Mr. Woll also about the conversation you had about Herbert coming from Germany, giving money to his father?

960 A. No, sir. That was because of the letter I wrote.

Q. Yes, sir.

A. The letter I wrote.

Q. Did you not tell him about that story at all at that time?

A. No, sir.

Q. Well, when did you write him, when did you write the letter?

A. I told——

Mr. WOLL. Here is the letter.

Mr. WARNHOLTZ. I am asking the question.

A. I told him that Hamby and I had knowledge from what they said and what we heard on the radio that Mr. Haupt did tell us in July that as his last resort he would use what Hamby called, what we call the "bug act." He was cutting up there, he was going to use that.

When that came on the radio I thought I should notify the government we already knew about this, through Mr. Haupt. Mr. Haupt told us he was going to do this. There it was.

Q. Well, did Mr. Woll and the other gentlemen ask you whether or not you believed Haupt was sane at that time?

961 A. Yes.

Q. Did they not ask you what he sold you, how he acted and so forth?

A. No, sir.

Q. They did not?

A. No, sir. Mr. Woll did ask me why I wrote the letter.

Q. What did you tell him?

A. I told him the reason for my writing that letter was I believed Mr. Haupt is sane, was sane then, and he was sane in 1942 and he is sane now. I will also insist that he was sane. I wrote that letter because I thought I had information that Mr. Woll should know as prosecutor for the people of this country, it was my duty to give it to him. I gave it to him.

Q. What do you base your opinion that he was sane now, as you told him? Did you see Haupt during the last few months?

A. I seen him this morning.

Q. When you were talking to Mr. Woll at the time?

A. I was referring to when I seen him in H-4.

Q. At that time he was sane?

A. Yes, sir.

Q. Did you tell him why you thought he was sane?

A. I talked with Mr. Haupt. I ordered his paper.

962 I ordered his cigarettes for him. I ordered his meals, whatever he wanted. I talked to the man for almost a month and he never gave me a foolish answer or asked a foolish question. He did do little things which I already knew was put on.

Q. How do you know it was put on?

A. Because he said——

Q. Did Hamby ask him whether or not he was faking insanity?

A. Did who?

Q. Did Hamby ask him in the county jail whether he was faking insanity?

A. No, that conversation. He had a conversation with me about a fellow that went to Menard, and he acted insane in Menard and he was two years in Menard and he came back to Chicago.

He was sentenced for robbery and Hamby and I met this fellow when we were going to court and he began telling us that he is being called there to the Judge, and he is sane now, but he is sure to be free.

We came back from court and that is what we were discussing, and Hamby and I were discussing and Mr. Haupt was interested in this conversation, and he asked questions about it. Then

963 Hamby and him talked about it.

Q. Mr. Haupt first indicated that he was interested in matters of insanity?

A. Yes, sir.

Q. Not Mr. Hamby, Mr. Hamby did not suggest it to Mr. Haupt?

A. No, sir.

Q. How long did you talk to Mr. Woll when you saw him the last time regarding the insanity matter?

A. I would say twenty minutes.

Q. Was Mr. Hamby present at the time?

A. Yes, sir.

Q. How long did you talk—did you talk to any other gentleman in the same office, that is, in the District Attorney's office?

A. Well, I was asked if I had signed a paper they showed me and I said yes, I sent this letter. They asked if I signed this letter and I said yes. I was asked about my name, my record, what I am in Statesville for.

Q. When did you come to Chicago this time?

A. May 15th.

Q. When?

A. May 15th.

Q. How many days ago?

A. Oh, it was about two weeks ago.

964 Q. Two weeks ago?

A. Yes.

Q. And you have since been in the County Jail?

A. Yes.

Q. Mr. Hamby, too?

A. Yes, sir.

Q. Do you occupy adjoining cells down there?

A. No, sir.

Q. How are you separated?

A. Hamby is in 18 and I am in 20.

Q. The same tier?

A. Yes, sir.

Q. You can talk together?

A. Through the bars; yes, sir.

Q. How far apart are those two cells?

A. Twelve to ten feet.

Q. Ten to twelve feet or so?

A. Yes, sir.

Q. Did you see Mr. Hamby this morning?

A. Oh, yes; I came over with him this morning.

Q. Did you see him yesterday?

A. Yes, sir.

Q. When did you discuss this case with him yesterday?

A. No, sir. I was playing pinochle all day yesterday.

965 Q. Then you came down here—before you came down here did Mr. Hamby tell you what to say?

A. No, sir.

Q. Did you not tell him this story that you told us today—we will call it a statement you made, that you gave in court here today, about Herbert's return from Germany on the submarine, and the money, and the WPA and all of that?

A. No, sir; I never told Hamby anything about it.

Q. You never told him that?

A. No, sir.

Q. The last time you testified here in the insanity matter, did Mr. Hamby give you information as to where your cells had been located?

A. Yes.

Q. What did he tell you then?

A. That Mr. Haupt was in cell 1 for a day. He seen Mr. Haupt the first day that he went there. I did not.

Q. Do you know whether or not Mr. Hamby knows this story about Herbert Haupt coming, having come from Germany, in the submarine and about the rubber boat, about having landed from the submarine, about the money being hidden under some rug and about the buying of an automobile, and all the

966 other matters? Does he know about this, too?

A. Well, Mr. Hamby did talk to Mr. Haupt; yes, sir.

Q. He did talk with him?

A. Yes, sir.

Q. About what time did he talk with him?

A. He talked to him in the evenings.

Q. In the evenings?

A. Every night; yes, sir.

Q. Was that before or after Mr. Haupt told you the story, do you know?

A. I do not know what Mr. Haupt told Mr. Hamby, or what story, what part. I did hear some conversation that he had with Mr. Hamby; yes, sir.

Q. But today Mr. Hamby knows about all of this?

A. I do not know if Hamby knows all about anything.

Q. I do not know whether—you do not know whether he knows if Herbert came back in a submarine?

A. Yes, sir; he knows that.

Q. Does he know that he claims he brought money back here and gave some to his father?

A. I heard Mr. Haupt tell him that; yes, sir.

Q. When was that, sometime in the evening he told you that?

A. All conversations took place in the evenings.

967 Q. Was it before or after Hans Haupt talked to you about all of this?

A. Before.

Q. Before?

A. Yes, sir.

Q. Does he also know about the WPA and the conditions in Germany?

A. I do not know, sir.

Q. Does he know about the $1,000 in the money belt?

A. I do not know that.

Q. Did you not say in the very beginning, Mr. Majerczak, that when Hans Haupt told this story to you you were in the cell thirty-five feet away and Hamby was in the cell about twelve feet away from Haupt's cell?

A. Yes, sir.

Q. Did he not hear all of it at that time?

A. I had no way of knowing if he ever was listening or what he was doing.

Mr. WARNHOLTZ. That is all.

The WITNESS. I do not have any way of knowing.

Mr. WARNHOLTZ. Thank you.

Redirect examination by Mr. WOLL:

968 Mr. WOLL. May this be marked for identification, Government's Exhibit 67?

(Whereupon said document was marked "Government's Exhibit 67" for identification.)

Q. I show you Government's Exhibit 67 for identification and ask you if you recognize that letter?

A. Yes, sir.

Q. What is that letter?

A. That is the letter that I wrote to the United States District Attorney, telling him that Mr. Haupt has told Hamby and I of his intention to use the insanity act as his last resort.

Q. Did you pay attention to every conversation that Hans Haupt had with Hamby?

A. No, sir.

Q. There was constant talking in the evening by all the inmates, was there not?

A. At times; yes, sir.

Mr. BERTRAM. I object to that as leading.

The COURT. Sustained.

Mr. WOLL. At this time, if your Honor please, I offer in evidence Government's Exhibit 67.

Mr. WARNHOLTZ. No objection.

The COURT. It may be received.

(Said document marked "Government's Exhibit 67" was received in evidence and is in words and figures as follows, to wit:).

969 Mr. WARNHOLTZ. Are you through?

Mr. WOLL. That is all.

Re-cross-examination by Mr. WARNHOLTZ:

Q. Just one or two more questions: Whose handwriting is this letter in, Mr. Majerczak?

A. Mine.

Q. Mr. Hamby also signed personally?

A. Yes, sir.

Q. You did not sign for him?

A. No, sir.

Q. Just one or two more questions: You stated that Mr. Haupt said he was going "to pull this big act" as a matter of last resort?

A. Yes, sir.

Q. Did he use the term "last resort"?

A. Yes, sir.

Q. Was that the exact term?

A. Yes, sir.

Q. And you remember that today, two years later?

A. Yes, sir.

Mr. WARNHOLTZ. That is all. Thank you.

Mr. WOLL. That is all.

(Witness excused.)

970 Mr. WOLL. It will take a little time for the next witness.

The COURT. Take a short recess, ladies and gentlemen.

(Whereupon the jury retired.)

Mr. WARNHOLTZ. May I ask, if the Court please, that I should like to have this witness held, that he cannot communicate with Mr. Hamby in the meantime.

Mr. WOLL. I do not think it possible, but I will make sure.

Mr. WARNHOLTZ. I should like it very much.

Mr. WOLL. I will see what can be done.

The COURT. You may make the request, but I do not know whether that is possible or not. I do not know what the arrangements are.

CARL HAMBY, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. WOLL:

Q. What is your name?

A. Carl Hamby.

971 Q. At the present time, Mr. Hamby, you are incarcerated in the State penitentiary at Joliet, are you not?

A. Yes, sir; that is right.
Q. What is the sentence that you are serving there now?
A. Life.
Q. Have you at any time, before the present conviction, been convicted of any felony?
A. Yes; I have.
Q. When was the first time you were convicted of a felony?
A. In 1926.
Q. In 1926 how old were you?
A. Eighteen years old.
Q. What was the conviction?
A. Larceny.
Q. Were you sentenced to a penitentiary?
A. I was sentenced to the Joliet State penitentiary.
Q. What was the term for which you were sentenced?
A. One to ten, indeterminate.
Q. Were you later released from Joliet?
A. Yes, sir; I was.
Q. Do you recall when you were released?
A. In 1930.
Q. Were you again sentenced in any court?
972 A. Yes, sir.
Q. Where?
A. State of Indiana.
Q. When?
A. 1932.
Q. What was the crime for which you were sentenced at that time?
A. Armed robbery.
Q. For how long a time were you sentenced?
A. Fifteen years.
Q. Did you serve that sentence?
A. Seven and one-half years of it.
Q. Do you recall about the time you were released from the penitentiary in Indiana?
A. In September 1939.
Q. What happened after you were released from Indiana?
A. I was returned back to the State of Illinois as a parole violator.
Q. Were you again incarcerated?
A. I was.
Q. And that incarceration was that for the old crime that you had committed?
A. Yes, sir; in 1926.
Q. Were you subsequently released?
A. Yes, sir; discharged.

Q. When was that?

A. 1941.

973 Q. Thereafter were you again charged with a crime?

A. Yes, sir; I was.

Q. In the State of Illinois?

A. Yes, sir.

Q. Were you convicted of that crime?

A. Yes, sir.

Q. Were you sentenced to Joliet?

A. I was.

Q. What was the sentence?

A. Life.

Q. Is that the sentence you are now serving?

A. That is correct.

Q. That life sentence was the result of a previous sentence in Illinois, was it not?

A. That is correct—1926.

Q. Do you recall when you were arrested on the charge for which you are serving sentence?

A. January 2d, 1942—7th.

Q. Were you placed in the county jail?

A. I was placed in the county jail January 12th.

Q. Do you recall where you were first placed in the County jail?

A. Yes; on tier F-1.

Q. Were you later transferred from that tier to another tier?

974 A. I was.

Q. Do you recall when that was?

A. It was July 21, 1942.

Q. About July 21st?

A. Yes, sir; about that time.

Q. To what tier were you transferred?

A. To H-4, the death row.

Q. What cell did you occupy when you were first transferred to that tier?

A. The first cell I occupied was number 3.

Q. At the time you were transferred to tier number 3, did you have an opportunity, in tier 4-H, in cell number 3, did you have an opportunity to examine the inmate of cell number 2 in that tier?

A. Well, the man was—the man was in number 1, was in cell number 1 and was later transferred from there to number 2, that is the man in number 1 was taken out and put in number 2.

Q. Was that the man in number 1?

A. Yes, sir.

Q. Did you observe him when you came there?

A. Yes, sir.
Q. Do you recognize that man in this courtroom?
A. I do.
Q. Will you identify him?
975 A. Mr. Haupt.
Mr. WOLL. Identifying the defendant, Hans Max Haupt.
Q. Did you say it was approximately July 21, 1942?
A. That is correct.
Q. Did you thereafter talk to Hans Haupt?
A. Yes, I did.
Q. Do you recall about the first time you talked to him?
A. Well—the first night I was there I talked to him.
Q. The first night you were there?
A. Yes, sir.
Q. Did he speak to you?
A. No, sir; not at first. Well, spoke to the guard first.
Q. When you talked to him did he answer you?
A. Yes, sir.
Q. What was the conversation that you had there the first night?
Mr. BERTRAM. Just a moment. May we enter an objection, your Honor, the same objection I made to the testimony of the previous witness, as to statements not made in court by the defendant
976 in this case, and as to statements made regarding overt acts?
The COURT. Yes; surely.

By Mr. WOLL:

Q. Will you tell us the conversation that particular night?
A. Mr. Haupt asked the guard if he would give him something to smoke and the guard told him he did not have any.
Q. Will you speak a little louder.
A. Mr. Haupt asked the guard if he had anything for smoking, if the guard had anything to smoke and the guard told him no, that he did not have anything to smoke.
The guard came to my cell, that was the next cell nearest and he asked if I had something to smoke, if I had anything, and the only thing I had was Durham, so I sent my pack of Durham to Mr. Haupt by the officer.
The officer told me Haupt was unable to roll a cigarette and wanted to know if he could have tailor-made cigarettes and I told him I was sorry, I did not have any. I did not have any tailor mades and I rolled some cigarettes and I sent them to Haupt.
Mr. Haupt thanked me for rolling the cigarettes.
977 Mr. WARNHOLTZ. Can you speak a little slower? You are speaking too fast and too low.
The COURT. Speak a little louder.

Mr. WARNHOLTZ. And not so fast.

The WITNESS. I have a cold.

Mr. WOLL. Take your time.

The COURT. Speak slowly.

The WITNESS. Mr. Haupt asked me if he could get some cigarettes up there and I told him he could get some cigarettes, he would have to wait until the commissary the next day and he thanked me for rolling those cigarettes and sending them over to him.

By Mr. WOLL:

Q. How long did you stay in cell 3?

A. I was in cell 3, to the best of my knowledge, three days.

Q. Then were you transferred?

A. Transferred out of the cell; transferred to number 4.

Q. The same tier?

A. Yes, sir.

Q. Did Hans Haupt remain in cell 1?

A. No, sir; he was taken out of number 1 and put in number 2.

Q. How far was cell 2 from cell 1?

A. I would judge about eight feet. It is only one cell in between.

978 Q. How long did you remain in cell 4?

A. Until August, to the best of my knowledge; it was August 14, 1942.

Q. Do you recall about how long Hans Haupt remained in cell number 2?

A. He was there until August 1942; 14th.

Q. August 14th?

A. Yes, sir.

Q. During the period of time from June 1942, June 21, 1942, to August 14, 1942, you had conversations with Hans, did you not?

A. That is right; yes, sir, I did.

Q. These conversations took place approximately every night?

A. Yes, sir; they did.

Q. And you had a conversation with other people in the cell block?

A. That is correct.

Q. Did you at any time have a conversation with Hans Haupt concerning Herbert Haupt?

A. I did.

Q. Do you recall approximately when the first conversation occurred in which Herbert Haupt was mentioned?

979 A. To the best of my knowledge it was five days after we were up there.

Q. About five days after? That would be approximately June 26th or 27th—July 26th or 27th?

A. That is correct.

Q. Do you recall that conversation?

A. I do.

Q. Will you state the conversation, please, and tell us the best you can the words, the language of Hans Haupt, what he said and what you said?

A. Yes, sir, I will.

Mr. BERTRAM. May the objection stand without renewing it?

The COURT. Yes; overruled.

The WITNESS. During the period of the evening——

The COURT. Keep your voice up.

The WITNESS. Yes, sir. I have a cold, Mr. Woll. During the period we were confined on H-4, Stanley Norris, John Majerczk, Bruno Jaconski, and John Pontius, the four of us up there were discussing our cases and our convictions, what we were up there for.

The State already had convicted me and given me a life sentence, and they were trying to convict me on another sentence, give me another life sentence, consecutively, with the [illegible] sentence I had.

We were discussing, we codefendants, things about how I should beat that second indictment, and we were accusing the states attorney's office of using gestapo methods to gain convictions in similar cases.

Mr. Haupt listened to the conversations, and the same night we were up there, there was a guard—I was arguing with the Assistant Superintendent, Mr. O'Mally why I was confined in death row, in solitary and he would not tell me why I was confined there.

He said: "You should be tickled you are here; you are up here with a famous prisoner."

I asked: "Who the hell was the famous [illegible] in that jail?"

And he said: "There is a German saboteur next to you; a German spy."

I had never heard of the man. I asked who he was and he said, "Mr. Haupt."

Q. Mr. Hamby, the question I asked you was for conversation with Hans Haupt, that you heard.

A. Yes, sir.

Q. Did you thereafter have a conversation with Hans Haupt?

A. Yes, sir. I am coming to that point.

Mr. Haupt began asking questions what would happen about the courts and one of the boys spoke up and told him, "The only thing for you is a firing squad."

He said: "Is that what I get?"

He asked me would they do that and I answered that he won't get no firing squad, "You will get a trial."

He said: "What will happen to me?"

I told him: "I do not know what you are in here for, Mr. Haupt."

He said: "I was in because of an accessory."

I said: "Accessory to what?"

Previously I had explained to him the organization of the courts and how the Federal Court and the State Court operate.

He said that his son had given him some money.

I asked him "what was wrong with the money, was it counterfeit, was it stolen?"

"No, it was not stolen."

982 He said it was German money.

I said: "What were you doing with German money?"

He said: "My son gave it to me. It was not real money, real German money, it was United States money, that his son had given him."

I understood it, the conditions and then he told me, gave the details of this case, what he was locked up there for.

Q. What did he say in that regard, Mr. Hamby?

A. He said about a month previous, before, his son went to Germany.

Mr. WARNHOLTZ. I will ask that we have the approximate time fixed. The witness has once stated it was five days after he arrived. We would like to know when this conversation was held.

By Mr. WOLL:

Q. Is this the conversation that you fixed five or six days——

A. Yes, sir; five days; yes sir.

Q. All right. Go ahead.

A. He said his son came to him and asked him for money; he was going to Germany, to join the German army there; he was very glad his son joined the German Army; he informed

983 his son that he was unable to pay his transportation, or pay his expenses to Germany.

Q. Keep your voice up.

A. Yes, sir. About a month later a certain friend of his gave him the money to go to Germany. He went to Germany with a friend of his named Wolfgang.

Q. Did Hans Haupt say he went to Germany?

A. He told me Wolfgang and Herbert went to Germany.

Q. Did Hans say Herbert went to Germany?

A. Yes, sir; he did. He said his son left home, and the first time he heard from him was in Mexico, and he said the second time he heard from him he was in Tokyo, Japan; then he did

not hear from him for some time then and then he received a lettter from his son where he was in Germany.

I suppose about a year elapsed. This country was already in war and he received a telephone call one afternoon from Mr. Froehling's home, told him to come over there, he had a surprise; that he saw his son there and he asked the son: "How did you come back to this country?"

And he said Herbert Haupt told him that he came back on a German submarine. He said he did not believe it at first but the son convinced him that he had come back on a German
984 submarine, and he explained to Mr. Haupt the purpose, his purpose of coming back to this country, that he came back here to sabotage, to blow up the ammunition dumps, and many factories; ammunition factories.

Mr. BERTRAM. I object to him explaining the matter in relation to this. He is giving an explanation here and I object to that.

The COURT. Just tell us as near as you can what Mr. Haupt said.

By Mr. WOLL:

Q. Are you telling now what Hans Haupt told you?

A. Yes, sir.

Q. All right.

A. He said that Herbert came back to blow up something you say?

A. Yes, sir.

Q. All right, go on.

A. To blow up munition dumps, obstruct traffic, railroad trains, everything possible, and he named one specific place, the Pressed Steel Company.

Q. He named one particular place?

A. Mr. Haupt told me that his son Herbert Haupt told him of one specific place, was the Pressed Steel; he was going to blow up utilities, communications, and disrupt the war effort
985 as much as he possibly could; "and he asked me—" Mr. Haupt—"I have to come to you to help me. I will need help." Mr. Haupt told him he would assist him as much as he possibly could.

Q. Go ahead.

A. He gave Mr. Haupt some money, a large sum of money and Mr. Haupt took this money and hid it in his home under the rug and Herbert Haupt gave him some other money to hold for him, personal money, and he also gave him money to buy an automobile, and Mr. Haupt told me that his son told him that he did not think it advisable that he should buy an automobile and Mr.

Haupt agreed that it was not advisable to buy this automobile, so Mr. Haupt bought the car himself for Herbert Haupt.

Q. Was there anything said further about the purchase of that automobile at that conversation?

Mr. BERTRAM. I object to that.

The COURT. Sustained.

By Mr. WOLL:

Q. Was anything further said about the automobile?

A. Herbert Haupt told his dad that he needed a car to get around, to do the work that he was supposed to do when he came back to this country.

986 Mr. Haupt at first did not want to buy a new car. He asked why he did not use the old car. Herbert Haupt told him he did not think the old car would stand up under the strain he was going to put the new car through; that he needed a new car to do the things that he was assigned to do in this country.

Q. Do you recall any further conversation that you had on that occasion with Hans Haupt concerning Germany itself, when the boy was there?

A. Yes, sir.

Mr. BERTRAM. I object to that. He should exhaust his recollection about conversations.

The COURT. Yes.

Mr. WOLL. I am trying to make it as general as I can.

Q. Was there any further conversation about the boy's travels?

A. Yes, sir. Mr. Haupt told me that while his son was in Germany that Herbert Haupt told him that he went to Germany, intending to join the German army, but he joined a sabotage school; he went to—he went on to say that he went to this school while he was there in Germany; that they taught about *about* explosives

and how to handle explosives and chemicals and place them

987 on railroad trains, told about doing it and using a railroad train, a small one, for experimental purposes, to teach the boys over there how to blow up troop trains and other things.

The way they do this was to make a—as small as they possibly could—a bomb and blow up the tracks, without the trackman paying attention.

He said while he was in Germany he visited his father and mother, where they were born, the graveyards, friends, and relatives over there; after he was completed, graduated from the sabotage school that the German government gave him money, to seven other boys—gave him money and seven other boys, put them on a submarine and sent them to this country.

That while they were coming back from Germany they had

some excitement on the submarine. It was a ship they saw going to England, and coming back to this country and they intended to torpedo the ship. He did not say whether the ship was torpedoed or not.

The German submarine landed his son off the coast of Florida and he went from the submarine to the shore, or to the shore line, in a rubber boat and he changed clothes there and hid the clothes they had on, the German uniforms that they shipped over on the submarine, changed to civilian clothes.

988 Q. The conversation that you have related you say took place about five or six days after July——

A. Yes, sir, that is correct.

Q. Do you recall any further conversation on that occasion?

A. Yes, sir.

Q. With Hans Haupt?

A. Yes, sir. I asked Mr. Haupt why he did not turn his son in and he said that his son was his own flesh and blood and after all he was helping the fatherland.

And he said his son—that he was worried when he came back, that there was some member from the Draft Board or some government man down from the Draft Board making inquiries from him, and he told him he should go and report to the Draft Board and throw the government off his trail, to keep them from arousing any suspicion towards his son.

Q. Do you recall anything further that Hans Haupt told you on that occasion?

A. Yes. We talked about the German army. I asked him about Hitler and why the German army was so different than it was when he was in the World War.

989 He said one of the reasons, he said the Jews are not in Germany any more, Hitler had taken out the Jewish capitalists over there and they were not running the country.

He said Hitler has prepared himself to win this war; he has prepared his soldiers, he has trained them sufficiently to win this war.

There was an argument came up between Haupt, myself, and a guard over there, over the battle of Stalingrad. I agreed with Mr. Haupt the German Army would take Stalingrad and I agreed the German Army would take Russia.

He compared the German Army with the United States Army and he says to his estimation, he says the United States Army was nothing but a bunch of punks, and they are going to fall and they are going to whipped like France and all the rest of the countries. I disagreed.

I disagreed with him. During this conversation the United States had not engaged on the battlefield, in no time.

Q. About how long a period of time did this particular conversation last?

A. It was, to the best of my knowledge three or
990 four days.

Q. Over a period of three or four days?

A. Yes, sir.

Q. Do you recall anything else that was said by Hans Haupt in regard to his boy and the activities of his boy?

A. Well, other than—no, sir; I cannot.

Q. To refresh your recollection was there anything at all said about this general nature of employment?

A. Oh, yes, sir. Mr. Haupt told me that his son wanted a job in the Optical Company; that he was trying to get a job there; that his son wanted some plans which this factory—out of this factory, regarding some kind of a sight. I do not remember now what sight, but he was supposed to turn those plans over to Germany; to the German government.

Q. By that do you mean that Hans Haupt told you this?

A. That is correct, Mr. Woll.

Q. Did he say that the boy told him this?

A. Yes, sir.

Mr. Bertram. I object to the leading question.

The Court. Sustained.

Mr. Woll. I just want to clear it up.

991 Q. On the occasion of this particular conversation you have just narrated——

A. Yes, sir.

Q. Will you give in your exact words, give the best you can the exact words that Hans Haupt used in that conversation?

A. Well, Mr. Woll, Mr. Haupt, he talks with a German accent and it would be pretty hard for me to express the words he used.

Q. I did not quite make myself clear. What I am trying to find out is whether Hans Haupt told you what his boy was to do, or whether he was telling you the conversation that he may have had?

Mr. Bertram. I think the District Attorney should ask for the conversation and let the witness relate, without suggesting to the witness what the conversation was about, what he wants him to tell him.

The Court. Sustained. You may ask if there was anything further said, about the same general subject. You may mention the general subject.

Mr. WOLL. If I may say, if your Honor please, I am not certain that defense counsel and I have the same thing in mind.

992 The witness has narrated the conversation. I do not want to go into that again. I was merely attempting to find out whether the witness was telling what the son said, or whether Hans Haupt told him that. I do not want to go into the conversation again or ask him anything further about it. That was not my purpose.

Mr. BERTRAM. My objection was that he should ask the witness if anything else was said, and the witness has testified here. He should ask the witness if anything else was said. That is a simple question and the witness can answer it.

Mr. WOLL. I do not want to go into any new subject matter.

Mr. BERTRAM. He can ask if he has not already testified. That will be simple and the witness will understand it.

The COURT. Sustained.

By Mr. WOLL:

Q. Do you recall any further conversations with Hans Haupt?

A. Other than the money that his son gave him?

I asked Mr. Haupt if the government had this money and he told me that it was his personal knowledge the government did have the money and he had knowledge that this was Ger-

993 man money that his son had given him.

And all the conversations that Mr. Haupt related to me there, over a period up there, he was telling me what Herbert Haupt told him.

Q. Was anything said as to when Herbert Haupt told him this?

A. Sir?

Q. Was anything said as to when Herbert Haupt told him this?

A. He said that Herbert Haupt talked to him, told him most of these things at their first meeting at Mr. Froehling's home; and he asked if those people, his friends and relatives and his father to help him.

Later on, other conversations, I had conversations regarding the Draft Board and the money, that came later.

The COURT. I think we will recess at this time until two o'clock. In the meantime do not discuss this case, ladies and gentlemen, nor permit anyone to discuss it with you. Return at two o'clock.

(Whereupon an adjournment was taken to Friday, June 2, 1944, at two o'clock p. m.)

994 In the District Court of the United States for the Northern District of Illinois, Eastern Division, at Chicago

UNITED STATES OF AMERICA

vs.

HANS MAX HAUPT

Before Hon. JOHN P. BARNES, Judge and a Jury

Friday, June 2, 1944, 2:00 o'clock P. M.

Parties met pursuant to recess.

Counsel present: Mr. J. Albert Woll, United States District Attorney for the Northern District of Illinois, Eastern Division, at Chicago, and Mr. Earle C. Hurley, and Mr. Richard G. Finn, Assistant United States District Attorney for the Northern District of Illinois, Eastern Division, at Chicago, appeared for the United States of America: Messrs. Paul A. F. Warnholtz, Frederick J. Bertram, appeared for the Defendant.

* * * * *

995 The COURT. Bring in the Jury.

(Thereupon the following proceedings were had in the courtroom in the presence of the Jury:)

The COURT. Proceed, gentlemen.

Mr. WOLL. We will turn the witness over for cross-examination.

CARL HAMBY, resumed the stand for further examination, after having been previously sworn, testified as follows:

Cross-examination by Mr. WARNHOLTZ:

Q. Mr. Hamby, what is the nature of the crime you were convicted of the last time on which you are now serving time?

A. Armed robbery.

Q. You saw Hans Max Haupt in the County Jail when you were transferred to Tier H-4?

A. Yes, sir; I did.

Q. And then within the first four days after you were transferred, which brings us up to about June 25th or 26th, 1942, Mr. Haupt told you most of these things that you testified to, is that right?

A. Yes, sir; and a later date, too.

996 Q. That was June 1942?

A. July.

Q. Well, he told you about that time his son having returned by a submarine?

A. Yes; that is correct.

Q. And that his son had buried in the sand of the Florida Coast, some kind of explosives?

A. No, sir; he didn't say anything about that.

Q. Did you say anything about explosives?

A. I didn't say anything about it, Mr. Haupt, Herbert Haupt buried those explosives in the sand. He said he changed clothes and hid them on the coast.

Q. But he knew they were damaging to our country, did he not?

A. Yes, sir; that is correct.

Q. That is what Hans Haupt told you?

A. Yes, sir.

Q. And in connection with doing that damage, he was going to use—how was he going to use that, how he was going to damage things and didn't you say he said he was going to blow up troop trains?

A. Yes, sir; with explosives.

Q. With explosives, and he asked Hans Haupt and also Froehling and Wergin would they help him?

A. Yes, sir.

Q. And they said they would, according to Hans Haupt, 997 is that correct?

A. He didn't tell me they said so; he said he would cooperate.

Q. He would cooperate and that this story, oh, let us say, came out within four or five or six days, after you were up in Tier H–4?

A. That and a later date.

Q. Well, most of this?

A. Yes, sir.

Q. While you were there on Tier H–4, and while Hans Haupt was up there, too; did you try to do him any harm?

A. No, sir; I did not.

Q. Well, do do you feel toward him, sympathetic?

A. I was in sympathy with Mr. Haupt; I didn't have anything against the man.

Q. You read in the newspapers about the Haupt case?

A. Sir?

Q. Had you read in the newspapers anything about the Haupt case before Mr. Haupt talked to you?

A. No, sir.

Q. On or about June 29th, 1942, where were you at that time?

A. I was in the County Jail—wait. You say the 29th?

Q. June the 29th, 1942?

998 A. I was in the County Jail.

Q. Did you read the newspapers then?

A. Yes, sir; I read the newspapers, comics.

Q. Just the comics?

A. That was practically all, and followed up the cases which were being tried in court, different courts.

Q. You did know we were engaged in war at that time, did you?

A. Oh, yes, sir; I had troubles of my own. The State had me under a charge for life sentence and was trying to get another conviction against me.

Q. Did you know whether or not we were engaged in war at that time?

A. Yes, sir.

Q. You procured a newspaper for Mr. Haupt, one which was not censored?

A. Yes, sir; I did get a newspaper for Mr. Haupt that wasn't censored.

Q. That was a Chicago Sunday Times?

A. Yes, sir; that is correct.

Q. Dated August 8th or 9th, 1942?

A. I can't remember the date of it.

Q. Well, how long was it after——

A: Right after his son was executed.

999 Q. Right after his son was executed?

A. Yes, sir.

Q. It was a Sunday paper?

A. To the best of my knowledge it was a Sunday paper, the Sunday Times.

Q. Did you see Mr. Froehling in the County Jail?

A. No, sir.

Q. Mr. Wergin?

A. No, sir.

Q. But you remember the names well, even today?

A. Mr. Haupt mentioned those names himself, up on H-4.

Q. At that time he mentioned them?

A. He mentioned those names before that first day he mentioned those names.

Q. He mentioned the names, Froehling and Wergin?

A. Yes, sir; he did.

Q. You remember the names now from that time, do you?

A. I remember the names; yes, sir.

Q. Did Hans Haupt tell you that he read stories about the entire matter in the newspapers?

A. Oh, I don't understand your question.

Q. Did he tell you he had read newspaper stories about the entire matter?

A. No, sir; he didn't tell me that.

Q. He gave you all of your information that you testified

1000 to today just from his own knowledge, as far as you know?

A. Yes, sir.

Q. How often had you rehearsed that story in your own mind before you testified here today?

A. I haven't rehearsed it.

Q. How do you know that the Chicago Sunday Times on August 8th or 9th, 1942, carried the story of the execution of his son?

A. I didn't know that, I asked that the guard bring a newspaper in that had the story in it about the news, about Mr. Haupt's son being executed.

Q. How did you know he was executed?

A. The guard told me.

Q. Who?

A. A guard told me his son was sentenced to be executed in Washington.

Q. The guard told you prior to that?

A. Just before he was executed.

Q. Before you got him the paper?

A. That is correct.

Q. And did you tell Mr. Haupt about it?

A. I did. The guard asked me not to inform Mr. Haupt; the Government didn't want Mr. Haupt to know anything about the case, or anything. I said to Mr. Haupt when that question came up in the tier, I didn't want to have any trouble up there, or anything, when he read his son was going to be executed,
4001 after the guard left, I informed Mr. Haupt his son was to be executed.

Q. Just what words did you tell him; what did you say to him?

A. I told him the Military Court had found his son guilty and he was sentenced to death, and that the case was in President Roosevelt's hands at that time for commutation of sentence.

Q. And that was in accordance with what the guards told you just before you gave him the paper?

A. That wasn't.

Q. What did the guard tell you?

A. He told me not to inform Mr. Haupt about it.

Q. Yes. But I mean the guard told you that the boy's fate was still in the hands of the President?

A. That is correct.

Q. Did you look at the paper when you got it?

A. I looked at the pictures.

Q. You looked at the pictures?

A. There is a picture of the electric chair. Mr. Haupt had the paper for about three hours around his cell.

Q. And he read that to you?

A. Yes, sir; he read that, and I passed it around, and I told him to get rid of the newspaper, because it was hot, and we didn't want to be caught reading it, because there would be trouble, a

1002 newspaper shouldn't be up there with that news in it or anything else.

Q. That was the Chicago Times or Sunday Times of August 8th, 1942?

A. I don't remember the date of it, sir.

Mr. WARNHOLTZ. I will ask that this be marked for the purpose of identification as "Defendant's Exhibit 4."

(Thereupon the document was marked as requested "Defendant's Exhibit 4" for identification.)

Q. State kindly, Mr. Witness, if you saw this in the particular paper which you gave to Mr. Haupt?

A. No, sir; I didn't see it; not that. I didn't pay no attention to the newspaper.

Q. You paid no attention to what?

A. I didn't pay any attention to the newspaper. Mr. Haupt had that newspaper about three hours in the cell and a lot of the fellows was wanting it, the Chicago newspaper, and Mr. Haupt after he gave me the paper, he wanted to read it to me, I didn't get a chance to look at the paper to read only the picture of the chair.

Q. Do you see a picture of the chair here in this paper?

1003 A. No, sir; I don't.

Q. This is marked the Sunday Times of August 9th, 1942.

A. No, sir; I don't see no picture of the chair.

MR. WOLL. Mr. Warnholtz, for the record, will you state whether it is a page out of the paper or the whole paper?

Mr. WARNHOLTZ. Page number 3 of that particular number of the Chicago newspaper, which says at the top, "Six Saboteurs Die in Chair; One Gets 30 Years." You did not see that?

A. No, sir; I didn't.

Q. You are certain it was the Sunday Times; you have seen that same Sunday Times carrying the story of his son's execution?

A. To the best of my knoweldge, sir.

Q. What did you charge him for the paper?

A. I didn't charge Mr. Haupt nothing for the paper. The guard charged $5.

Q. To whom did the guard charge that?

A. He told me to get $5 off of Mr. Haupt; then I paid the money to the guard, the $5, gave him the $5.

Q. Did you get the $5 from Mr. Haupt and give it to the guard?

A. I did.

1004 Q. Do you remember, Mr. Hamby, that you testified here about two months ago in the insanity proceedings of Mr. Haupt?

A. Yes, sir; I testified in this court.

Q. Would it refresh your recollection if I now state to you at that

time you specified that you paid the guard the $5 and subsequently collected from Mr. Haupt?

A. No, sir. Mr. Haupt, Mr. Warnholtz, I testified Mr. Haupt gave me $5, and I gave it to the guard, and the guard brought the newspaper later and gave it to me, and I gave the newspaper later to Mr. Haupt.

Q. Do you remember at that time, I asked you the question, how much money did you have when you were taken up to Tier H-4?

A. $2.40, some cents, I believe, I testified.

Q. Before you did testify at the insanity hearing of Mr. Haupt, heard in this courtroom about two months ago,—you did testify to that?

A. That is right, I did.

Q. Did you then tell the story which you told us here today?

A. No, sir; I didn't tell the story.

Q. Why not? Why not?

A. In the courtroom?

1905 Q. Yes.

A. That was an insanity hearing.

Q. Well, you concluded it didn't belong in an insanity hearing?

A. Yes, sir.

Q. That is why you didn't tell it?

A. That is correct.

Q. You remember, Mr. Hamby, I asked you at the time of the insanity hearing, why you volunteered to appear as a witness to show that Mr. Haupt was sane?

A. Yes, sir.

Q. What was your answer?

A. It was my duty. I have a mother. I have a father. I have sisters. I have a brother in the Army and another one going in the Army. I feel it is my duty to come here and testify as a citizen—not a citizen, but as an American.

Q. You felt that was your duty, and that is what caused you to appear at the sanity hearing?

A. It is my duty. I feel it is my duty.

Q. As a good American?

A. As an American.

Q. What type of an American were you when four days after you appeared in cell H-4 Hans Haupt told you, he volunteered and told you that they would blow up an American troop train, you felt sympathetic, did you; what kind of an American were you then?

1906 A. I have troubles of my own.

By Mr. Woll:

Q. Have you answered the question yet?

A. Yes, sir.

Q. Have you finished the answer?
A. Yes, sir.
Mr. WARNHOLTZ. That is all.

Redirect examination by Mr. WOLL:

Q. Mr. Hamby, you had numerous conversations with Hans Haupt before he told you about Herbert Haupt, didn't you?
A. Yes, sir; I did.
Q. You talked about a variety of things, didn't you?
A. That is correct.
Q. He told you about this case?
A. He did.
Q. You hadn't advised him about legal matters?
A. I did not.

Mr. WARNHOLTZ. I object, if your Honor please; not proper redirect examination; those matters were not touched on in cross-examination.

The COURT. Well, I think they were. You asked him if he didn't tell this and that. Overruled.

By Mr. WOLL:

1007 Q. You are giving the conversation that led up to Hans Haupt telling you about the things he did?

A. Mr. Haupt was very ignorant in court procedure, and he didn't know at that time whether he was going to a State court or a Federal court, or where he was going. He asked me—we were talking about being railroaded to the penitentiary, and so on—and he spoke up and wanted to know what would happen to him, and one of those fellows told him he would be given the firing squad, and he asked me to assist him in the system of courts, and after I explained to him, after I learned he was a Federal prisoner, he was going to a Federal Court, and he would have a chance to tell his side of the story. I questioned him, however, of his case, and I advised him also about the evidence that could be presented, legal evidence and illegal evidence, whether the Government knew they could prove certain things. I told him he would be tried by a Jury, or have a chance for a bench trial, and he could either plead guilty, or have a jury trial, and the conversation got up to the point he wanted to know what would happen to him. He told me that his son told him if he ever was arrested, his son, Mr. Haupt was arrested, that is Herbert Haupt, would be given
1008 life, and the most he would get would be a year, as an accessory, or whatever he was supposed to be in there for. I told him that the Government could give him, as an accessory, just what his son got.

Q. Now, did you further advise him along these lines?
A. Yes, sir; I did. I asked him if he made a statement to the

Government. Of course, I asked him if it was a confession, and he didn't understand the word, "confession," and wanted to know what it meant. I asked him whether they were Government agents or the police that pinched him; and they asked him about the case, and he said, "yes, he had told them some things." He didn't remember just what he had told them. I asked him if he had signed a statement, and he said, he signed some papers. I also asked him if he was beaten up for this information, if he was beat by the Federal agents, and Mr. Haupt told me the Federal agents didn't lay a hand on him, but that they did question him.

I asked him if there was any witness to the statement, other than Government employes, and he said, he didn't know whether they were or not.

Q. Now, did all of those present hear him tell you the story?

A. What is that?

Q. Did all of those present hear him tell you the story?

1009 A. Yes, sir. And before that, he asked about his wife. He wanted to know where she was at. I believe John Pantanno spoke up and said, "Your wife is in the County Jail and they are using her for immoral purposes." Mr. Haupt became angry about this. He said, "Carl, is that true?" I said, "No, it is not true. If your wife is in the County Jail—I don't know if she is or not—she is taken care of by the women—she is on the women's care, and there is no man around, or allowed around where she is at." So he wanted to know if there was any way how he could find out. I told him he could see the Warden, Warden Sain of the County Jail, and he wanted to know about getting a message to his wife.

Mr. WARNHOLTZ. I object to this, your Honor. I still maintain it is not proper redirect examination. It is immaterial to what was brought out on cross-examination.

The COURT. I think you have pursued the subject far enough.

The WITNESS. He wanted to know about——

Mr. WOLL. Pardon me. Oh, I think that is all, your Honor. Just a minute.

1010 Q. On cross-examination, you stated Hans Haupt mentioned the name of Froehling and Wergin?

A. Yes, sir.

Q. In what connection did he use their names?

A. Stanley Norris, the other defendant, came up the same night. He brought a newspaper with him. He was reading an article in the newspaper about some fellow that went out of the jail. He had committed a crime and got arrested, and we were talking about it. Mr. Haupt spoke up and wanted to know if his name was in the paper. Norris asked him who he was, and he says, "My name is Haupt." He looked through the paper and he

told him, "No, there is nothing in the paper about it." He wanted to know if there was anything about his friends. He asked who his friends' names was and he said, "Froehling and Wergin."

Norris looked at the paper and informed Mr. Haupt the paper was chopped up and censored, and there wasn't anything in the paper concerning him or any of his friends.

Q. At the sanity hearing, Mr. Warnholtz referred to, I examined you; did I not?

A. Yes, sir; you did.

Q. Did I ask you any questions about conversations asked
1011 you today; did I ask you to tell any of those conversations?

A. I don't understand you.

Mr. WARNHOLTZ. I object as not proper redirect examination.

The COURT. I think it is.

By Mr. WOLL:

Q. At the sanity hearing when you were a witness, did I ask you any questions concerning the statement that you today have attributed to Mr. Hans Haupt about his son?

A. No, sir.

Q. I didn't ask you anything about those questions?

A. No, sir; that is correct; you didn't.

Mr. WOLL. That is all.

Mr. WARNHOLTZ. I don't want anything more to do with him.

Mr. WOLL. That is all.

Mr. FINN. I should like to offer in evidence at this time on behalf of the Government, Government's Exhibit 19, which has been identified as a ring belonging to Herbert Haupt, and was identified by both Mr. Berger and Mr. Hirsh.

Also Government's Exhibit 21 for identification, being a Social Security Card of Herbert Haupt, identified by both Mr. Berger and Mr. Hirsh.

1012 As Government's Exhibits 44, 45, and 46, being the records of the Hotel Seminole, identified by Mr. Andrews.

Also Government's Exhibits 47, 48, and 49, the records of the Bey Jewelry Company, Jacksonville, Florida, identified by Mr. Allen.

Also Government's Exhibit 50 for identification, being a wrist watch identified by both Mr. Allen and Mr. Hirsh.

I also offer in evidence Government's Exhibit 52, being a draft registration card of Herbert Haupt, identified by Mildred Gordon, Ralph Gregg, and Mr. Hirsh.

I offer in evidence Government's Exhibit 53, being the original registration card of Herbert Haupt, identified by Mildred Gordon of the Draft Board.

Also Government's Exhibits 54 and 55, being the Warner Motor Sales order for the sale of the car, signed, Hans Max Haupt, identified by both Mr. Farrell and Mr. Vinson.

As to Government's Exhibit 54, the original slip or order blank.

As to Government's Exhibit 55, a copy of the bill of sale.

I would also like to offer in evidence at this time Govern-
1013 ment's Exhibits 60, 61, and 62, being photographs of the Haupt residence, and 2234 North Fremont Street, identified by numerous agents of the Federal Bureau of Investigation, including Messrs. Handly, Dixon, Lynch, and a number of others.

Mr. WARNHOLTZ. I object to the introduction of those instruments as far as Hans Haupt is concerned, unless they are offered merely for the purpose of establishing the enemy status of Herbert Haupt and that he was sent through to the United States for the purpose of acting as an agent for the German Government. I will not have any objection as to that.

Mr. FINN. Well, you have your objection en masse.

Mr. WARNHOLTZ. You offered them in en masse.

The COURT. Well, take up the first one first.

Mr. FINN. All right. The first one is the ring of Herbert Haupt.

The COURT. Any objection?

Mr. WARNHOLTZ. With reference to the ring, if it is received for establishing the status of Herbert Haupt as an enemy at the time he arrived here, there is no objection to it.

Mr. FINN. That is the purpose of this; also to identify him as the same man.

The COURT. For the purpose of identification, it may be received and marked "Government's Exhibit 19."

1014 (Thereupon the document so offered in evidence, was marked and received in evidence as "Government's Exhibit 19," and is in words and figures as follows, to wit:)

1015 Mr. FINN. The next one is Government's Exhibit 21, being a Social Security Card of Herbert Haupt, and that is offered for the purpose of showing his enemy status.

Mr. WARNHOLTZ. No objection.

The COURT. It may be received.

(Thereupon the document so offered in evidence, was marked and received in evidence as "Government's Exhibit No. 21," and is in words and figures as follows, to wit:)

1016 Mr. FINN. I also wish to have marked as "Government's Exhibits Nos. 44, 45, and 46," being records of the Hotel Seminole, and they are offered for the same purpose.

The COURT. They may be received.

(Thereupon the documents so offered in evidence, were marked

and received in evidence, as "Government's Exhibits 44, 45 and 46," and are in words and figures as follows, to wit:)

1017 Mr. FINN. I offer as Government's Exhibits 47, 48, and 49, a record of the Bey Jewelry Company, which are offered for the same purpose, showing the enemy status of Herbert Haupt.

The COURT. They may be received.

(Thereupon the documents so offered in evidence, were marked and received in evidence as "Government's Exhibits Nos. 47, 48, and 49," and are in words and figures as follows, to wit:)

1018 Mr. FINN. As Government's Exhibit 50, a wristwatch, which is offered for the same purpose.

The COURT. It may be received.

(Thereupon the document so offered in evidence, was marked and received in evidence as "Government's Exhibit No. 50," and is attached hereto as an exhibit:)

1019 Mr. FINN. As Government's Exhibit 52, a draft registration card of Herbert Haupt, identified by Mildred Gordon, Ralph Gregg and Hirsh.

Mr. WARNHOLTZ. For the same purpose?

Mr. FINN. No. I think this and other purposes, that is to show when Herbert Haupt was here, he was not only an enemy agent, but he was told to go down to the Draft Board and register, and that is where the FBI, for the purpose it is offered as indicated, that the Government was off the trail, and that has been identified by——

The COURT. It may be received.

(Thereupon the document so offered in evidence, was marked and received in evidence as "Government's Exhibit No. 52," and is in words and figures as follows, to wit:)

1020 Mr. WARNHOLTZ. I object to that particular one, if your Honor please, for the purpose of showing the Government just——

The COURT. Overruled.

Mr. FINN. As Government's Exhibit 53, the original registration card of Herbert Haupt.

The COURT. It may be received.

(Thereupon the document so offered in evidence, was marked and received in evidence as "Government's Exhibit No. 53," and is in words and figures as follows, to wit:)

1021 Mr. WARNHOLTZ. Are you offering that for the same purpose?

Mr. FINN. For all purposes.

Mr. WARNHOLTZ. The objection is the same.

The COURT. Overruled.

Mr. FINN. As Government's Exhibits 54 and 55, the Warner Motor Sales records, which are also offered for all purposes.

The COURT. They may be received.

(Thereupon the documents so offered in evidence, were marked and received in evidence as "Government's Exhibits 54 and 55," and are in words and figures as follows, to wit:)

1022 Mr. FINN. As Government's Exhibits 60, 61, and 62, being photographs of the Haupt's residence, and they are offered for all purposes.

The COURT. They may be received.

(Thereupon the documents so offered in evidence, were marked and received in evidence as "Government's Exhibits 60, 61, and 62," and are in words and figures as follows, to wit:)

1023 Mr. FINN. Swear this witness, if you please.

HANS ERIC POPPE, called as a witness on behalf of the Government, after having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. FINN:

Q. Will you state your name, please?
A. Hans Eric Poppe.
Q. Spell your name for the court reporter, please.
A. P-o-p-p-e.
Q. Where do you live, Mr. Poppe?
A. 827 Agatite.
Mr. FINN. Spell that for the reporter.
A. A-g-a-t-i-t-e.
Q. What is your business or occupation?
A. Painter and decorator.
Q. How long have you been engaged in that occupation?
A. Since 1933.
Q. Do you know the defendant Hans Max Haupt?
A. Yes, sir; I do.
Q. Will you point him out in the courtroom here, please?
A. Right there [indicating].

1024 Mr. FINN. Indicating for the purpose of the record the defendant Hans Max Haupt.

Q. When did you first become acquainted with the defendant Hans Max Haupt?
A. In 1936.

Mr. FINN. Your Honor, this is the gentleman whose testimony is also offered on the question of intent and it is to be restricted for that purpose.

The COURT. Very well. The testimony of this witness is offered on the question of intent only, and it will be received and considered by you on that question only.

Mr. BERTRAM. If the court please, may we renew all objections

we made to the witness, I think it was Willie Schroeder, and subsequent thereto.

The COURT. Yes; that may be overruled.

Mr. BERTRAM. I mean our objections the same as to his testimony without renewing them.

The COURT. Yes.

By Mr. FINN:

Q. When did you first become acquainted with Hans Max Haupt?

A. In 1936.

Q. Where did you first meet him?

A. In Northwest Hall.

Q. At what sort of an affair?

1025 A. At the German World War Veterans Association.

Q. Now, how long a span of years did you know Hans Max Haupt?

A. From 1936 to 1940.

Q. And how frequently did you see him during that period of time?

A. Well, once a month at Northwest Hall; then, of course, I would see him maybe twice or three times a week.

Q. Were you a member of that organization?

A. No; I was not.

Q. Was any of your family a member of it?

A. My father.

Q. Were you born in this country?

A. No; I was not.

Q. When did you come to the United States, Mr. Poppe?

A. In October, 1924.

Q. Now, in addition to seeing him at Northwest Hall, did you at any time work with Hans Max Haupt?

A. Yes; I worked with him at the Belden-Stratford Hotel.

Q. What type of work did you do at the Belden-Stratford?

A. Painter and decorator.

Q. And what type of work did Hans Max Haupt do there?

A. Painter and decorator.

1026 Q. During what year did you work at the Belden-Stratford Hotel when Hans Max Haupt did?

A. From 1937 to 1939.

Q. And how frequently did you see Hans Max Haupt during that period while you were working with Hans Max Haupt as a painter?

A. I would see him every morning and every night when I worked with him, maybe twice or three times a week when——

Q. You mean you were working in the same rooms with him?

A. That is right, when I was.

Q. Do you know his brother-in-law, Walter Froehling?
A. Yes; I do.
Q. Do you know Mrs. Lucille Froehling?
A. Yes; I do.
Q. Calling your attention to the year 1939, did you at any time visit at the Froehling home?
A. Yes; I did.
Q. How did you happen to go over there?
A. We took a private job.
Q. When you say "we," whom do you mean?
A. Mr. Haupt and I took a private job on the north side, close to the Froehling home.

Mr. FINN. Go ahead.

1027 The WITNESS. He invited me for dinner.

Q. Did you go over there on that occasion?
A. Yes; I did.
Q. Now, did you meet Herbert Haupt?
A. Yes; I did.
Q. When you say "he" invited you, whom do you mean?
A. Mr. Haupt.
Q. Had you seen Herbert Haupt?
A. I had not; no, sir.
Q. That was the first occasion you saw him?
A. That is right.
Q. I will show you what has been referred to as Government's Exhibit 3, and I will ask you if that is Herbert Haupt?
A. That is Herbert Haupt.
Q. Now, on that occasion did you notice in what manner Herbert Haupt was dressed?
A. Yes; he had a sort of riding boots, or riding pants, and a sweater.
Q. Did you have any conversation on that occasion—by the way, do you recollect what day it was?
A. It was in July; yes, sir; on Sunday.
Q. Of what year?
A. 1939.
Q. Did you have a conversation with Hans Max Haupt there relative to where Herbert was going?

1028 A. Yes; he told me.

Mr. BERTRAM. I object to his leading the witness.
Mr. FINN. Your Honor, I think that is very general.
The COURT. Yes; that is all right. Overruled.

By Mr. FINN:

Q. Will you tell us what, if anything, Hans Haupt said on that occasion?
A. Yes; he told me Herbert was going to leave for the Bund

Camp in Michigan for a week or ten days, and that Mr. Froehling was going to take him up there.

Q. Did you have any further conversation with Hans Haupt on that subject at that time?

A. Yes; he told me on several occasions he takes boys and Herbert to the Camp up in Michigan.

Q. Now, calling your attention to the summer of the year 1938, at the Belden-Stratford Hotel, did you have any conversations with Hans Max Haupt while you were there, when you worked there?

A. Yes; I did. We were talking about the war, and about his boy.

Q. Do you recollect about when that was?

A. It was in 1939, in the summer.

Q. Where did this conversation take place?

A. It took place in the apartment we were working in.

Q. Do you recollect who else was there, if anyone?

1029 A. There were several more fellows, but I don't remember which now.

Q. All right. Now, will you tell us what Hans Max Haupt said at that time?

A. Well, he told me that if war would break out with the United States and Germany——

Mr. FINN. I can't hear you.

A. He told me that if war would break out with the United States and Germany, he would never permit his boy to join the American Army. He would send him to Mexico, and from there he could go to Germany and join the Air Force.

Q. Now, do you recall any further conversation with Hans Max Haupt?

A. Yes; he told me at the same time that if war broke out, that if the country would take him in the Army, he would crawl over the enemy lines and tell them our position.

Q. Did you have any further conversation with Hans Max Haupt about Germany or this country?

A. Yes; I had.

Q. In the first place, if you had any further conversations.

A. I did.

Q. Can you tell us approximately what time those con-

1030 versations took place?

A. They all mostly happened in 1939.

Q. And where did they take place?

A. In the apartment.

Q. Will you tell us what was said at that time?

A. Well, we were talking about war and different things, and he told me he had no feeling for the United States at all. His feel-

ings were only for Germany, and he wished Hitler would come over here and drive all the Jews out, because the Jews are running this country.

Mr. FINN. That is all with this witness.

Cross-examination by Mr. WARNHOLTZ:

Q. Mr. Poppe, are you a citizen of the United States?

A. I am not, sir.

Q. When did you come to the United States?

A. In 1924.

Mr. WARNHOLTZ. That is all. Thank you.

Mr. FINN. Your Honor, at this time, I should like to see if we could stipulate that within the time specified by the statute, a complete list of the witnesses was served upon the defendant, and also upon his counsel, within the time specified by the
1031 statute. There was also served both on counsel for the defendant and the defendant himself a copy of the list of the jurors. I think that there were forty-seven in one list and sixty in another, is that correct?

Mr. WARNHOLTZ. Those lists were properly served on the defendant, and the defendant's counsel.

Mr. FINN. May we have about five minutes, your Honor, at this time?

The COURT. Yes; take a short recess, ladies and gentlemen.

(Thereupon, a short recess was had.)

1032 (The following proceedings were had in open court, but in the absence of the jury.)

The COURT. Are you ready to proceed, gentlemen?

Mr. WOLL. Yes; if your Honor please. I was waiting for the jury. I think we should do that in the presence of the jury.

Mr. WARNHOLTZ. I have some motions.

The COURT. The government rests.

Whereupon the Government rested.

Mr. BERTRAM. We have some motions that we would like to present to the Court.

The first motion is a motion on behalf of the defendant at the conclusion of the government's evidence, to direct the jury to find the defendant not guilty of the charges contained in the indictment. It is in written form, if your Honor please. Shall I offer it to you, or would you like to have me read it?

The COURT. Let me see it.

Mr. FINN. May we have a copy, please?

Mr. BERTRAM. I will give a copy to counsel for the government.

1033 (And thereupon a motion in writing, in the following form was submitted on behalf of the defendant:

"In the District Court of the United States of America for the Northern District of Illinois, Eastern Division

No. 44 Cr. 129

UNITED STATES OF AMERICA

vs.

HANS MAX HAUPT

MOTIONS ON BEHALF OF HANS MAX HAUPT, DEFENDANT

And now at the conclusion of the Government's evidence in the case, comes the defendant, Hans Max Haupt, by Paul A. F. Warnholtz, his attorney, and moves the court to direct the jury to find this defendant not guilty of the charges contained in the indictment in the above-entitled case;

And the defendant, Hans Max Haupt, makes the following separate and additional motions with respect to the specific overt acts charged in the said indictment:

The defendant, Hans Max Haupt, moves the Court to direct the jury to find this defendant not guilty upon each of the overt
1034 acts designated and separately numbered in said indictment as follows: "1", "2", "3", "4", "5", "6", "7", "8", "9", "10", "11", "12", "13", "14", "15", "16", "17", "18", "19", "20", "21", "22", "23", "24", "25", "26", "27", "28", "29".

And in support of all and each of the foregoing motions, and with respect to all and each of the said numbered overt acts in said indictment, this defendant shows unto the Court as follows:

1. There is no evidence in the case proving or tending to prove that this defendant has committed treason against the United States.

2. There is no evidence in the case that this defendant adhered to, or was guilty of adhering to, the enemies of the United States.

3. There is no evidence in the case that this defendant gave, or was guilty of giving, to the enemies of the United States aid and comfort.

4. There was not testimony of the two witnesses to the same overt act of this defendant.

5. There was no confession in open Court by this defendant as to any overt act or charge contained in said indictment.

1035 6. There is no evidence in the case that this defendant adhered to the enemies of the United States and gave said enemies aid and comfort.

7. There is no evidence in the case showing any intent on the part of this defendant to commit treason against the United States.

8. There is no evidence in the case that this defendant com-

mitted any of the acts alleged in the indictment as "overt acts" with intent to adhere to the enemies of the United States and to give said enemies aid and comfort, or with any intent to commit treason against the United States.

9. There is no evidence in the case that this defendant gave aid and comfort, if any aid and comfort was given, to more than one person, or to any person other than Herbert Haupt.

10. There is no evidence in the case that this defendant intended to or did give aid and comfort to Herbert Haupt, or in any other manner assisted the said Herbert Haupt, with the intention of thereby furthering the interests of any nation with which the United States was at war, or with the intention of committing any act detrimental to the interests of the United States.

PAUL A. F. WARNHOLTZ,
Attorney for Hans Max Haupt, defendant.

1036 The COURT. Do you wish to argue this?

Mr. BERTRAM. No; not particularly, your Honor.

The COURT. Have you seen this?

Mr. FINN. Yes, your Honor. We have just received a copy.

The COURT. What have you to say?

Mr. FINN. With reference to this motion to direct, it is a general motion. Of course, we believe that the evidence is unquestionably overwhelmingly sufficient to go to the jury:

With reference to the separate motions to acquit upon each of the overt acts, my understanding of the procedure is this: There is no such thing as a motion to direct the jury to enter a not guilty verdict on an overt act; that it is the proper procedure for the Court, at the end of the case, to submit to the jury those overt acts which the Court believes have been proven by the required number of witnesses under the Constitution, and to instruct on those acts; then to exclude those overt acts which have not been submitted for the purpose of showing treason, except for the purpose of intent. I think that is the procedure, if the Court
1037 please; there is no such thing in law as a finding on a motion to direct as to overt acts.

Mr. BERTRAM. Do you withdraw any particular overt act?

Mr. WOLL. On that question, I think that we follow the holding of our own Court of Appeals in this particular case, where it passed upon the question of whether each overt act was a separate offense and the Court held it was not a separate offense; they held that it is the same as in a conspiracy case.

The COURT. The motion will be overruled and denied.

Mr. BERTRAM. Our next motion, if the Court please, is a more restricted motion.

(And thereupon Mr. Bertram read a motion in the following form:

"And now comes the defendant, Hans Max Haupt, by Paul A. F. Warnholtz, his attorney, and moves the Court to strike and exclude from the evidence in the case all testimony of all witnesses relating to conversations with Herbert Haupt and alleged statements made by Herbert Haupt outside of the presence of the defendant, upon the following grounds:

1038 (a) All such testimony constitutes hearsay evidence which is inadmissible.

(b) Said Herbert Haupt died before the commencement of this trial and his alleged statements are inadmissible as evidence against this defendant who was not present when such alleged statements were made.

(c) All such testimony was incompetent, immaterial, and irrelevant to the issues in the case.

And the defendant further moves the Court to instruct the jury that they are not to consider any such testimony relating to such conversations and alleged statements of Herbert Haupt.")

The COURT. Do you care to argue that particular motion?

Mr. BERTRAM. No.

Mr. HURLEY. The Court has already ruled on the same objection, or motion to strike. It is the same.

The COURT. The motion will be denied.

Mr. BERTRAM. Our next motion, if the Court please, is:

1039 (And thereupon Mr. Bertram read a motion in the following form:

"And now comes the defendant, Hans Max Haupt, by Paul A. F. Warnholtz, his attorney, and moves the Court to strike and exclude from the evidence in the case all testimony of witnesses for the prosecution relating to any statements alleged to have been made by the defendant herein prior to June 17, 1942, upon the grounds that all such testimony is irrelevant, incompetent, and immaterial and relates to matters not involving the charges against the defendant contained in the indictment, and tends greatly to the prejudice of the rights and interests of the defendant and deprives him of the rights to a fair and impartial trial herein;

"And the defendant further moves the Court to instruct the jury that they are not to consider such irrelevant, incompetent, and immaterial testimony herein.")

The COURT. The motion will be denied.

(Mr. Bertram read the motion a second time.)

The COURT. What is your theory on that?

1040 Mr. BERTRAM. June 17th is the date that was alleged in the indictment referring to the charges against the defend-

ant herein; that is the date that Herbert landed in this country, according to the government's testimony, and it is our theory all the testimony of the witnesses relating to statements supposed to have been made by Hans Haupt before then are not competent to be used as evidence against him on this trial.

The COURT. It will be denied.

(And thereupon Mr. Bertram read a motion in the following form:

"And now comes the defendant, Hans Max Haupt, by Paul A. F. Warnhoftz, his attorney, and moves the Court to strike and exclude from the evidence in the case all testimony of witnesses for the prosecution relating to matters involving activities of Herbert Haupt, which occurred prior to the middle of June, 1941, upon the grounds that the same is irrelevant, incompetent, and immaterial, and relates to matters not involving the charges against the defendant contained in the indictment, tending to the great prejudice of the rights and interests of the defendant and deprives him of the right to a fair and impartial
1041 trial herein;

"And the defendant further moves the Court to instruct the jury that they are not to consider such testimony relating to activities of said Herbert Haupt which occurred prior to the middle of June, 1941.")

Relating to activities of the said Herbert Haupt which occurred prior to the middle of June 1941. That is the date that he is supposed to have left Chicago and gone to Mexico.

The COURT. The motion will be denied.

Mr. BERTRAM. Did your Honor receive from me a motion directed as to December 7th, 1941, the commencement of the war?

The COURT. Yes.

Mr. BERTRAM. You have that also?

The COURT. Yes.

(And thereupon a motion in the following form was submitted in writing on behalf of the defendant:

"And now comes the defendant, Hans Max Haupt, by Paul F. Warnholtz, his attorney, and moves the Court to strike and exclude from the evidence in the case all testimony of wit-
1042 nesses for the prosecution relating to any statements alleged to have been made by the defendant herein prior to December 7th, 1941, upon the grounds that the United States was not then engaged in any war, and that all such testimony is irrelevant, incompetent, and immaterial and relates to matters not involving the charges against the defendant contained in the indictment, and tends greatly to the prejudice of the rights and interests of the defendant and deprives him of the right to a fair and impartial trial herein;

And the defendant further moves the Court to instruct the jury that they are not to consider such irrelevant, incompetent, and immaterial testimony herein.")

Mr. BERTRAM. That was also denied?

The COURT. Yes.

Mr. BERTRAM. Exceptions follow as a matter of course, your Honor?

The COURT. Yes.

Mr. WARNHOLTZ. May it please the Court, I have a number of witnesses here, some of whom will take a considerable time, but there are one or two, and especially one who should leave town today. He is a farmer and he came in from Hartford,
1043 Michigan. I would like to put him on today. The remaining witnesses are not quite in rotation. We did not know until now how long it would take today. If possible, I should like to put on the remaining witnesses on Monday morning, with the exception of the farmer and a gentleman connected with a bank.

The COURT. How much time do you think it will take?

Mr. WARNHOLTZ. The case in its entirety, we should be able to finish Monday before 4:30.

The COURT. What do you say?

Mr. WOLL. We have no objection to that.

The COURT. You would like to put on two witnesses?

Mr. WARNHOLTZ. Yes. There will be two witnesses.

The COURT. Gentlemen, I asked you the other day to let me have your suggestions.

Mr. WARNHOLTZ. Yes.

The COURT. Instructions of the government?

Mr. FINN. We have them, if your Honor please.

Mr. BERTRAM. We have had some, but we have not had time to organize them. We have not all of them complete. I have quite a number of them; if it would help the Court to give them to you
now, I will immediately sort them out. It will take me
1044 about five minutes. May I have that time?

The COURT. You may do that before you go.

Mr. BERTRAM. I will leave them before I go.

Mr. WARNHOLTZ. There may be five or six additional suggestions later on.

The COURT. Very well. How long do you gentlemen think you will desire to argue the case?

Mr. WOLL. If your Honor please, Mr. Finn closed in about an hour and a half at the last trial, and we will stand on that.

The COURT. How much time do you think you would want?

Mr. WARNHOLTZ. About two and a half hours, your Honor.

The COURT. Well, we will let it go then, not to exceed two and a half hours on a side. Will that be satisfactory?

Mr. WOLL. Yes.

The COURT. Counsel will divide the time amongst themselves. The burden will be upon you to keep within that time.

Mr. WOLL. We should like, if your Honor please, to have permission to divide the closing argument between two attorneys for the government, but it will all be within the time.

1045 The COURT. Whatever way you wish to arrange it. When you open your case, make it a complete opening.

Mr. WARNHOLTZ. We will do that.

Mr. WOLL. Our present plan is that we anticipate it will take about three-quarters of the time on the opening.

The COURT. So long as it does not exceed two hours and a half on a side. Bring in the jury, please.

(The following proceedings were had in the presence of the jury:)

The COURT. Ladies and gentlemen, the government has rested its case, and the defendant has now called his first witness to the stand.

(And thereupon the defendant offered the following evidence:)

FRANK TITZLER, called as a witness on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. WARNHOLTZ:

Q. Will you please state your full name?

1046 A. Frank Titzler.

Q. Will you speak a little louder, Mr. Titzler?

A. Yes, sir.

Q. Where do you live, Mr. Titzler?

A. Hartford, Michigan.

Q. What is your business?

A. Farmer?

A. Farmer, now.

Q. A farmer?

A. Yes, sir.

Q. I will refer you to June 20, of 1942, to a Sunday—and I will ask you——

Mr. WARNHOLTZ. Strike that.

Q. Mr. Titzler, do you know the defendant, Hans Max Haupt?

A. Yes; I do.

Q. Do you see him sitting here in the courtroom?

A. Yes, sir.

Q. Will you point him out, please?

A. Over there.

Mr. WARNHOLTZ. Let the record show that the witness pointed out the defendant in the courtroom.

Q. I now refer you to Sunday, June 21, 1942, and ask you if you saw the defendant Hans Max Haupt on that day?

A. He did work on that day.

1047 Q. Did you see him on that day?

A. I saw him.

Q. At about what time of day did you see him on that day?

A. At about ten o'clock in the morning until one o'clock noon.

Q. You first saw him at about ten o'clock in the morning?

A. Yes, sir.

Q. Where was that?

A. At 2547 North Clark.

Q. Were you living at that time at 2547 North Clark?

A. Yes; I was employed as a janitor there.

Q. You were employed there as a janitor in that building?

A. In that building; yes, sir.

Q. That is an apartment building?

A. An apartment building.

Q. How many apartments?

A. Twelve.

Q. Did you have a conversation with anyone when you first saw Mr. Haupt on that Sunday morning at about ten o'clock?

A. I used to take the tools when he comes to work, I had

1048 to open up the tool shed and I was the one to supply him with material. He was only getting paid for the work that he does there. That is all. He comes there and I open up the shed and he takes the tools. When he was through why, he brought the tools back in and I locked them up.

Mr. FINN. I will ask that the witness speak slower and distinctly.

By Mr. WARNHOLTZ:

Q. Mr. Titzler, will you kindly speak a little slower, take your time, and speak as loud as you possibly can?

A. Yes.

Q. Do I understand you correctly that he applied that morning to you for his tools which were locked up in the basement?

A. That is right.

Q. What type of tools were they?

A. He had to take paints, and I think on that morning, only took paint.

Q. Did you tell me, or did he tell you what he wanted to do with it?

A. He was finishing up a flat on 4125—2547 North Clark Street, on the third floor, that day, he finished it, that apartment.

Q. He finished up what? He was a painter and decorator, is that correct?

1049 A. Yes; that is right.

Q. Was he alone at the time when he called?

A. He was alone, alone that day.

Q. Then you gave him this paint, tools and equipment?

A. Yes, sir.

Q. And he went up there, as far as you know?

A. That is right.

Mr. FINN. I will object to that.

By Mr. WARNHOLTZ:

Q. All right, I will ask it the long way.

A. When he was through we went over for a couple of beers. That was around one o'clock.

Q. At about one o'clock?

A. Yes, sir.

Q. When did you see him again after ten o'clock?

A. I did not see him—just about when he was through, you know, just before one.

Q. He came down and what did he do then?

A. Bring up his tools.

Q. Brought them up or down?

A. Bring the tools down and I lock them up.

Q. What did you do?

A. Well, I opened up the storeroom and put the tools back in the shed again.

Q. After that did you have a conversation with him, 1050 what happened?

A. Well, he treated me for a beer, so we went to Kelley's place, at the tavern, had a couple of beers together.

Q. That was about what time?

A. One o'clock.

Q. In the afternoon?

A. In the afternoon.

Q. Did you have a further conversation with him at that time?

A. Well, Mr. Haupt said he was going over to the owner to collect—

Mr. FINN. Wait a minute.

Mr. WARNHOLTZ. Are you objecting?

Mr. FINN. Yes, sir; I am objecting.

Mr. WARNHOLTZ. What are you objecting to?

Mr. FINN. It is the answer to which I object. The question was whether he did or did not have a conversation, not what the conversation was. I would like to have it stricken.

Mr. WARNHOLTZ. Well, what are you objecting to now, my question?

Mr. FINN. No; to the answer.

Mr. WARNHOLTZ. I am not asking that the answer be stricken.

1051 Q. Did you have further conversation with him?

A. We did.

The COURT. He said that he did.

By Mr. WARNHOLTZ:

Q. And what was it?

A. Going over and having a beer together.

Q. After that, what did he say?

A. He is going over to the owner, to get his money, pay for the work he was doing.

Q. The work at the building, if you know, what building?

A. At 2547 North Clark Street.

Q. And all this took place on Sunday, June 21, 1944 between ten o'clock in the morning and one o'clock in the afternoon?

A. That is right.

Mr. WARNHOLTZ. That is all. Thank you.

Mr. WOLL. No cross-examination.

(No cross-examination. Witness excused.)

The COURT. You may step down.

JOSEPH N. WALLENBORN, called as a witness on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

1052 Direct examination by Mr. WARNHOLTZ:

Q. Will you kindly state your full name?

A. Joseph N. Wallenborn.

Q. Where do you live?

A. 1825 Cornelia Avenue.

Q. What is your business, Mr. Wallenborn?

A. Bank clerk.

Q. You are connected at the present time with the Lake View Trust and Savings Bank; is that correct?

A. Yes, sir.

Q. Located at 3201 North Ashland Avenue in the city of Chicago?

A. Yes, sir.

Q. Mr. Wallenborn, you came down here in response to a subpoena duces tecum?

A. Yes, sir.

Q. And you were asked to produce certain records? Have you got those records with you?

A. Yes, sir.

Q. Will you hand them to me?

Mr. WARNHOLTZ. I will ask that this sheet be marked "Defendant's Exhibit 5" for the purpose of identification. Do you want to see it first.

(Whereupon document was marked "Defendant's Exhibit 5" for identification.)

1053 Q. I will hand you now what has been marked "Defendant's Exhibit 5," so marked for the purpose of identification, and I will ask you if you have ever seen this sheet before?

A. Yes, sir.

Q. When did it come into your possession before I handed it to you now?

A. Yesterday.

Q. Who gave it to you?

A. Mr. Perilod.

Q. Is he connected with the Lake View Trust and Savings Bank?

A. Yes, sir.

Q. In what capacity?

A. He is in the trust department.

Q. Do you know where this record was taken from by him?

A. From the Trust register.

Q. Is that one of the records kept by the Lake View Trust and Savings Bank in the regular course of conducting its business?

A. Yes, sir.

Q. Do you know of your own knowledge if this sheet forms one of its records?

A. Yes, sir.

1054 Q. Of the Lake View Trust and Savings Bank?

A. Yes.

Q. I will refer you to line number 59——

A. That is A-74159. That is line 59.

Q. I refer you now to this particular entry shown here on the sheet marked at the top, "Draft Register" and a number of drawn lines, and "Lake View Trust and Savings Bank" and to a document called here number A-74159; and further reading in favor of Hans Haupt and shown bought by John Schoenfeld, in the amount of $101.50, dated June 27, 1942.

A. Yes, sir.

Q. I will ask you if you know that this entry was made in the regular course of business of the Lake View Trust and Savings Bank through its employees?

A. Yes, sir.

Mr. WARNHOLTZ. May this be marked "Defendant's Exhibit 6" for indentification?

(Document was marked "Defendant's Exhibit 6" for identification.)

Q. I now show you Defendant's Exhibit 6 for identification and ask you what that is?

A. A cashier's check.

Q. Drawn upon what bank?

A. Lake View Trust and Savings Bank.

1055 Q. And in whose favor?

A. Hans Haupt.

Q. In what amount?

A. $101.50.

Q. What is the number of that check?

A. A–74159.

Q. Is that number identical with the number I pointed out before on the record?

A. Yes, sir.

Q. That check, according to your records, was bought by whom?

A. John Schoenfeld.

Q. I will now ask you to look at the check and tell me if by the perforation thereon if you can show or tell when that check was paid?

A. That was paid on June 27, according to the records here.

Q. I will show you—according to the book records here?

A. Yes, sir.

Q. I refer you to the reverse side of this check and I will ask you to state the endorsement there shown.

A. Hans Haupt.

Q. What else is there on here?

A. 2234 Fremont Street.

1056 Q. Do you find any other endorsements on here?

A. No, sir.

Q. Will you state the rule of the Lake View Trust and Savings Bank with reference to checks cashed at the bank when they bear but one endorsement?

A. Payable to the man that has endorsed it.

Q. By whom it is endorsed?

A. Yes, sir.

Q. That it is evidence that it was paid directly to that party?

Mr. FINN. I object to the form of the question, that it is evidence of something. Let him ask what it shows or what it evidences, if anything.

By Mr. WARNHOLTZ:

Q. Can you state or describe to me if the check was paid under the rules of the Lake View Trust and Savings Bank?

Mr. HURLEY. If the Court please, I object to that, unless it is shown this witness knows.

By Mr. WARNHOLTZ:

Q. Do you know the rules of the Lake View Trust and Savings Bank with reference to endorsements on checks, checks presented at your cash windows for payment? Are you familiar with those rules?

A. Yes, sir.

Q. What are those rules with references to someone
1057 coming over and cashing a check?

A. It is paid to the endorser.

Q. It is paid to the endorser?

A. Yes, sir.

Q. And if only one endorsement appears upon it, what is the rule with reference to that?

A. It shows it is just paid to the one party.

Q. Would that party be the one whose endorsement appears thereon?

A. Yes, sir.

Q. You will find on this check an endorsement stamp—I presume there is no objection if I read that, instead of going the long way—showing that this check was cleared through the Harris Trust and Savings Bank, June 29, 1942. Was this presented there on that day? State how that happened to get on there. State if you can.

A. What are you referring to? The date?

Q. The endorsement stamp on it; what is that stamp?

A. That is stamped on the date of the payment.

Q. It was paid according to the perforation on the 27th day of June, was it not?

A. Yes, sir.

Q. And that was the date your bank paid that check?

A. Yes, sir.

1058 The COURT. Let me see it just a minute. Go ahead.

Mr. WARNHOLTZ. I now offer Defendant's Exhibits 5 and 6, so marked for identification in evidence as Defendant's Exhibits of the same number.

Mr. WOLL. I would like to ask a few questions.

Mr. WARNHOLTZ. Cross-examine, please.

Cross-examination by Mr. WOLL:

Q. You do not know the signature of Hans Haupt, do you?

A. No, sir.

Q. You never saw the man——

Mr. FINN. Answer, do not shake your head.

By Mr. WOLL:

Q. Will you answer, please; you never saw this signature of Hans Haupt in your life?

A. No.

Q. You do not know whether this is his signature or not, do you?

A. No; I cannot tell.

Q. All you came here to testify was as to the records of the bank; is that it?

A. Yes, sir.

Q. To show there was a transaction on that day?

A. Yes, sir.

1059 Q. You did not pay out any money yourself on that transaction?

A. No, sir.

Q. You do not know anything about it, as to how it was paid out?

A. No, sir.

Q. You do not know whether some man came into the bank and stated he was Hans Haupt and presented that check; or put it this way: If a man had gone to the bank and stated he was Hans Haupt and presented that check endorsed that way, would the bank, under its rules, have paid it?

A. With proper identification.

Q. What kind of identification?

A. It would depend on what he would have.

Q. Do you know in this particular instance?

A. No.

Q. Nothing about it?

A. No.

Mr. WOLL. I think that is all.

Redirect examination by Mr. WARNHOLTZ:

Q. Will you please look at the endorsement side of the check and can you tell us if there is anything that refers to the

1060 identification of Max Haupt on the check, and I particularly call your attention to the number 265127, and the name of Mills; and can you tell me, of your knowledge of the way the bank conducted its business, what that might indicate?

A. That indicates that one of the officials—one of the officers of the desk—says it was O. K.

Q. Well, he O.K'd the identity of the particular person?

A. He probably did.

Q. The number "265127," or whatever that number is—what was that, if you know?

A. Well, that is pretty hard to say. That might have been a savings bank number, or it might be some other number; I cannot tell you.

Q. But Mr. Mills, who identified the identity of that person—

A. Well, he signed his name there.

Q. And would that be an acceptance when he signs his name?

A. Well, there should be an O.K. stamp on there if he signed it.

Q. Was Mr. Mills at the time one of your officers?

A. Yes, sir.

Q. Is he now?

A. No, sir.

1061 Q. Do you know what his physical condition is at the present time?

A. He is sick; heart trouble.

Mr. WARNHOLTZ. That is all.

Mr. WOLL. No more cross-examination.

(Witness excused.)

Mr. WARNHOLTZ. Any objection to the instruments?

Mr. WOLL. If I could find out what the purpose of it is, I may be able to answer.

Mr. WARNHOLTZ. The purpose was merely to show that Hans Haupt on that particular morning went there and cashed this check, to show what he did every day during the time that Herbert Haupt was here, and in order to show that he went to the Lake View Trust and Savings Bank that particular morning and got this money. We will bring the purchaser of the check.

Mr. WOLL. I will object, then, because it does not show that he cashed the check.

Mr. WARNHOLTZ. The thing is you object to it?

The COURT. The check has not been proven yet.

Mr. WARNHOLTZ. Under the rules of the bank could that check have been paid to any other than Hans Haupt?

Mr. WOLL. I object to that.

1062 The COURT. I cannot go into that now. This is simply the signature. Is there any objection to the other? What is the other offer? What is the other paper?

Mr. WOLL. I have no objection to the record.

Mr. WARNHOLTZ. We will show that it was bought by a man by the name of Schoenfeld.

The COURT. You have not as yet connected it up.

Mr. WOLL. I have no objection to number 6 at all, showing there was a withdrawal of money.

The COURT. You will have to connect it up.

Mr. WARNHOLTZ. This is a cashier's check and the record showing a check issued and paid that same day.

The COURT. It may be received.

(Whereupon the document marked "Defendant's Exhibit 5" was received in evidence and is in words and figures as follows, to wit:)

1063 The COURT. Any objection to the other offer?

Mr. WOLL. I object to the check.

The COURT. I will reserve the ruling.

Mr. WARNHOLTZ. That is all. You may go.

(Witness excused.)

The COURT. We will recess at this time, ladies and gentlemen; until ten o'clock Monday morning.

In the meantime do not discuss this case with anyone nor permit anyone to discuss it with you. If anyone should attempt to communicate with you or talk with you, communicate that at once to the Court. Do not discuss it among yourselves until it is finally submitted to you for decision, which I estimate will be Tuesday or Wednesday.

Monday morning at ten o'clock.

(Whereupon an adjournment was taken to Monday, June 5, A. D. 1944, at the hour of 10:00 o'clock a. m.)

* * * * *

1064 In the District Court of the United States for the Northern District of Illinois Eastern Division, at Chicago

UNITED STATES OF AMERICA

vs.

HANS MAX HAUPT

Before Hon. JOHN P. BARNES, Judge and a Jury

Monday, June 5, 1944, 10:00 o'clock A. M.

Parties met pursuant to an adjournment.

Counsel present: Mr. J. Albert Woll, United States District Attorney for the Northern District of Illinois, Eastern Division, at Chicago, and Mr. Earle C. Hurley, and Mr. Richard C. Finn, Assistant United States District Attorneys for the Northern District of Illinois, Eastern Division, at Chicago, appeared for the United States of America;

Messrs. Paul A. J. Warnholtz, Frederick J. Bertram, appeared for the Defendant.

* * * * *

1065 (And thereupon the following proceedings were had in the courtroom outside the presence and hearing of the Jury:)

Mr. BERTRAM. If the court please, at this time, we would like to advise the court, we would like to enter an objection to the Gov-

ernment's attorneys dividing the time so that two of the Government's attorneys should be permitted to respond after the defendants have made their arguments, defendant's counsel have made their arguments.

The COURT. Well, what difference would it make to you whether one man or two men make the argument, if in each case they are proper rebuttal arguments.

Mr. BERTRAM. Well, we think, that by having two Government attorneys arguing after we are all through with our arguments would be a disadvantage to the defendant, and it should be limited to a reply by one Government attorney.

Mr. WOLL. It may be we wouldn't——

The COURT. I don't know of any rule of procedure that limits any party litigant to one lawyer. I can see some difficulty to counsel in attempting to divide the reply. I can't see how that hurts the other side. Overruled. Bring in the Jury.

1066 (Thereupon the following proceedings were had in the courtroom in the presence and hearing of the Jury:)

Mr. WOLL. Good morning, ladies and gentlemen.

The JURY. Good morning.

Mr. WARNHOLTZ. Good morning.

The JURY. Good morning.

The COURT. Good morning, ladies and gentlemen.

The JURY. Good morning.

Mr. WARNHOLTZ. Mr. Peter Wolf, please.

Thereupon the defendant introduced the following evidence and proceedings in his behalf:

PETER WOLF, called as a witness on behalf of the Defendant, after having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. WARNHOLTZ.

Q. Will you kindly state your name?

A. Peter Wolf.

The COURT. Peter what?

The WITNESS. Wolf.

Mr. WARNHOLTZ. Kindly talk louder and slowly, Mr. Wolf, so that the Jury can hear you, too.

1067 Q. Where do you live, Mr. Wolf?

A. At 2140 Lincoln Avenue.

Q. In the City of Chicago?

A. Yes, sir.

Q. A little louder, kindly.

A. All right.

Q. And what business are you engaged in?

A. I am a painter-decorator.

Q. Do you know the defendant Hans Max Haupt?
A. Well, I worked with him; that is the only way I know him.
Q. You know him?
A. Yes, sir.
Q. Do you see him in the courtroom now?
A. Yes, sir.
Q. Will you point him out kindly?
A. Right there [indicating].
Mr. WARNHOLTZ. The record will indicate that the witness pointed out the defendant Hans Max Haupt.
Q. I now refer you to Saturday, June 20, 1942, and will ask you what, if any, relationship you had with Hans Max Haupt on that day?
A. I just got a call to help him out on a job.
Mr. WARNHOLTZ. A little louder kindly, if you can.
A. I got a call to help him out on a job, a painting and decorating job;
1068 Mr. WARNHOLTZ. Yes.
The WITNESS. So I happened to be off that day and I gave him a hand-out, I worked with him.
Q. You worked with him on that day?
A. Yes, sir.
Q. Where did you work with him on that day?
A. I believe it was 2545 North Clark Street.
Q. In Chicago?
A. Yes, sir.
Q. Can you state the time of day when you worked with him at 2545 North Clark Street, Chicago, June 20, 1942?
A. On or about 8 o'clock in the morning, to about 10:30 or 11 at night.
Q. During the entire day?
A. Yes, sir.
Q. And what were you and he doing at that address?
A. I was painting and decorating, and he was papering.
Q. You interrupted your work by having luncheon, I take it?
A. Oh, yes.
Q. And at about 10:30 at night, when you quit, what did you and he do at that time?
A. He took me home.
Q. Over to your home on Lincoln Avenue?
A. That is right.
Q. How did he take you home, by means of automobile,
1069 or how?
A. By his automobile.
Q. Do you remember the name of the janitor for that building?
A. I do not.

Q. Would you know the name if I gave it to you?
A. I don't know; I don't recall that. I knew him. I seen him. I wouldn't know his name.
Q. Would it refresh your recollection if I asked you if his name might be Frank Titzler?
A. Probably so. I don't know.
Q. You do not remember?
A. No; I don't know the man only by sight.
Q. Could you describe whether he was a heavy set man?
A. Oh, yes; he was a heavy stout man.
Q. And about what age would you judge?
A. Oh, I would say fifty or over.
Q. Now, did you, Mr. Wolf—I will put it this way: Did you again work the next day at the same address with Hans Haupt, on Sunday?
A. No; I did not.
Mr. WARNHOLTZ. You may cross-examine.
Mr. HURLEY. No cross-examination.
Mr. WARNHOLTZ. That is all. Thank you. Mr. Nolan.
(Witness excused.)

1070 WILLIAM J. NOLAN, called as a witness on behalf of the Defendant, after having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. WARNHOLTZ:

Q. Mr. Nolan, kindly spell your name.
A. N-o-l-a-n.
Q. N-o-l-a-n, correct?
A. That is right.
Q. And your first name is William?
A. That is right.
Q. Mr. Nolan, kindly talk louder and slowly, so that the Jury will understand you.
The COURT. I didn't get that name.
The WITNESS. William J. Nolan.

By Mr. WARNHOLTZ:

Q. Where do you live, Mr. Nolan?
A. 2051 North Larabee Street.
Q. In Chicago?
A. In Chicago.
Mr. WARNHOLTZ. I believe you will have to talk still a little louder, if possible.
The WITNESS. All right.
Mr. FINN. What was the address?
Mr. WARNHOLTZ. 2051 North Larabee Street, Chicago.

Q. What business are you engaged in, Mr. Nolan?
1071 A. Building and cleaning contractor.
Q. How is that?
A. Building and cleaning contractor.
Q. Mr. Nolan, how long have you been engaged in that business?
A. About fourteen years.
Q. I ask you, Mr. Nolan, do you know one Hans Max Haupt?
A. I do.
Q. Do you see him in the courtroom now?
A. I do.
Q. Will you kindly point him out?
A. Right over there [indicating].
Mr. WARNHOLTZ. The record will indicate that the witness points out Hans Max Haupt, the defendant, now in the courtroom.
Q. I will refer you to Monday, June 22, 1942, and ask you, Mr. Nolan, if on that day you had any business transactions with Hans Max Haupt?
A. I did.
Q. Did you see him on that day?
A. For a short while; yes.
Q. What was Hans Max Haupt doing when you saw him, and where did you see him at that time?
1072 A. Starting on a small job for me on the south side a repair job.
Q. A repair job?
A. That is right.
Q. Can you state about where that was?
A. It was on 43rd, I think, 126 or 123 East 43rd Street.
Q. About what time of day did you see him there?
A. It was early in the morning.
Q. Was he alone at that time?
A. No; I believe he was with one other party.
Q. What was he doing; was he working then?
A. They were waiting for material at the time, when I came in, they were starting to do some work on the job.
Q. How was Hans Max Haupt dressed, in his working clothes, or how?
A. Working clothes.
Q. When you say early in the morning, about what time in the morning was it?
A. I do not recall. It has been a couple of years now. I don't know. Between nine and ten o'clock, and I think I saw him early in the morning that same morning, I think he came over about 7 o'clock to pick up some material. I think I saw him twice that day. I think I saw him early in the morning and again about nine o'clock later in the day.

1073 Q. I refer you to Tuesday, June 23, 1942, and ask if you saw Hans Max Haupt on that day?

A. I stopped over for some reason, about something that had to be done on the job, or something. I asked him what had to be done, then I left.

Q. Where was that?

A. In the same place.

Q. Was he on East 43rd Street, in Chicago?

A. Yes, sir.

Q. What was Hans Max Haupt doing when you arrived at that place?

A. They were building up a wall.

Q. And he was actively working on it?

A. At the time when I was there; yes.

Q. Was he bricklayer there, or in what capacity?

A. As a bricklayer.

Q. And he was wearing his working clothes?

A. Yes, sir.

Mr. Hurley. I object to this line of examination.

The Court. Yes.

Mr. Warnholtz. Q. How was he dressed?

A. He was dressed in his working clothes. He was working.

Q. How long did you see him there?

A. I was only there a few minutes at the time. I had
1074 some place to go. I couldn't stay around. I showed him what had to be done, something about some part of the wall, he didn't think he ought to do, he had time or ought to do it, so I went in. I wasn't there very long, then I left.

Q. Was he there alone working on this brick wall job?

A. No; he was with the same party that he was there the day before with.

Q. Do you know the name of that party?

A. I do.

Q. What was his name?

A. Emil Topsing.

Q. Do you know where Emil Topsing is now; is he living or dead?

A. Emil Topsing got killed about three or four months ago.

Q. How?

A. He fell while doing his work.

Q. In an accident?

A. In an accident.

Q. I now refer you to the succeeding day, Wednesday, June 24, 1942, and ask you to state whether or not you saw Hans Hax Haupt on that day?

A. I saw him again that day—I believe just a few minutes later

I talked with him, as I did before; I stayed about a half an hour; in fact, I think I had to go with him that day.

Q. Where?

A. 43rd Street.

Q. Same job?

A. Yes, sir.

1075 Q. What was Hans Max Haupt doing there?

A. They were finishing up that day.

Q. Finishing laying the brick?

A. That is right.

Q. That is, to complete this wall that you just spoke about?

A. That is right.

Q. Who was with him, if anyone?

A. I believe there was another party there that day. I am not sure. I don't know whether Topsing was there. I thought there was a third party there; I don't remember.

Q. Do you know the relationship between Topsing and Haupt, as far as that job was concerned?

A. I don't know exactly, no; the relationship; they worked together, as far as I know.

Q. On that particular job?

A. That particular job. I knew Emil for a long time before. Emil worked for me four or five years prior. How they got connected together, I don't know. I used to give Haupt some work as a helper, and whether he was a partnership or not, I don't know.

Q. When you say "Emil", you mean Emil Topsing, the party now dead?

A. That is right.

1076 Q. I now refer you to June 25th, 1942, and ask you whether or not you saw Hans Max Haupt on that day?

A. No; I didn't.

Q. Did you have any conversation prior to that day with Hans Max Haupt regarding some job on Oakley Boulevard?

A. To the best of my knowledge, I believe on Wednesday I asked him to go over to a job on Oakley Boulevard, and one over on Adams Street.

Q. What type of job was that over on Oakley Boulevard?

A. Stack to be rebuilt.

Q. A chimney?

A. A chimney stack.

Q. On Adams Street, what type of a job was that?

A. That was a repair job on a chimney.

Q. A repair job on what?

A. A repair job on a chimney. It had to be repaired.

Q. On a chimney?

A. Yes, sir.

Q. Now, I call your attention to the succeeding day, Friday, June 26, 1942, and ask you if you saw Hans Haupt on that day?

A. When I came over to that job around noontime, they were just finishing up.

Q. Where was that?

A. On Oakley Boulevard.

Q. When you say "they were finishing up," who?

1077 A. There were two or three people there. I don't know who they were; only Emil and Haupt I knew; the other parties I didn't know.

Q. Emil Topsing and Hans Haupt were there?

A. That is all.

Q. They were there all in their working clothes?

A. Yes, sir.

Mr. HURLEY. I object to his leading the witness.

The COURT. Yes.

By Mr. WARNHOLTZ:

Q. How were they dressed?

A. They were all dressed in working clothes. They were just finishing the job. I says to Haupt, well, I says, "I will go and you collect the money for this." And he said, "The party already paid me the money." I gave him the job of the time and I said if the party paid them, and then I went and saw the party, and said to them, "If they were satisfied?" and they said, "Yes; they were." I asked Haupt if he finished the job on Adams Street, and he said he didn't. Of course, I said, "Why didn't you finish?" He said, "He was afraid when he got the job." He said, "He was afraid of falling off the end." I said, "No need to be afraid." I told him how it should be done, and he said, "I guess you are right," and he drove over there.

Mr. WARNHOLTZ. Just a moment now.

1078 Q. On this job on Oakley Boulevard, where Hans was working on Thursday and Friday, you stated there was also, in addition to Topsing, a third person working. Who they were you do not remember?

A. Two or three.

Q. Would it refresh your recollection if I asked you if this third person was Carl Eggert?

A. I did not know him. I wouldn't know him even if I saw him.

Q. After that job was completed, you had a conversation with Hans Haupt and what happened then?

A. I asked him if he finished the job on Adams, and he said he hadn't completed it. He said the stones on top were loose, and he said he was afraid they might fall; and he said that job of

fixing the chimney, he said he couldn't do; and I told him I thought it was a simple thing, and I told him how to do it.

Q. What did you do?

A. We went over together and finished it.

Q. How did you proceed over to the job, by automobile or how?

A. I drove over in my car and he drove over in his.

Q. Who drove with him; anyone?

A. Emil Topsing and this Eggert.

1079 Q. This third person?

A. Yes, sir.

Q. Did you notice the automobile Hans Haupt was driving in?

A. I remember the car.

Q. Do you remember what type car it was?

A. Well, I don't know. I knew it was a black automobile. I don't know whether it was a Chevrolet or Pontiac. I believe it was a Chevrolet.

Q. Did you notice whether or not there was any material on that automobile?

A. Yes; there was.

Q. What was on it?

A. Ladders and stuff he had finished up on Oakley Boulevard.

Q. Then when you got to the Adams Street job; what was done, if anything, by Hans Max Haupt and by you or any of the other two?

A. The other fellow stayed; I showed him how to get the stones on top. We were only there for a short while, and then left.

Q. You and Hans Max Haupt completed the job; is that right?

A. That is right.

Q. And after that, what happened?

A. Nothing. I went about my business, and he went about his business.

1080 Q. You drove off?

A. I drove off, that is right.

Mr. WARNHOLTZ. That is all. You may cross-examine.

Cross-examination by Mr. HURLEY:

Q. Mr. Nolan, referring to Wednesday, June 24th, where was it you said you saw Haupt on that day?

A. On 43rd Street.

Q. What time of day was it you saw him?

A. I believe around noontime.

Q. Is that the day you say you ate with him?

A. That is right.

Q. You ate around noontime?

A. That is right.

Q. What time was it you left him that day?

A. I was only there about half an hour, and left.
Q. Would you say you left at 12:30?
A. Maybe 1:30. I don't know. We don't exactly go to dinner at 12.
Q. What is your best judgment?
A. I would say around 12:30 and 1 o'clock.
Q. About 12:30 noon?
A. That is right.
Q. Now, what time did you leave Haupt on Friday at the Adams Street address you spoke of?
A. I believe that was around 2 or 2:30.
Q. In the afternoon?
A. That is right.
1081 Mr. HUBLEY. That is all.
Mr. WARNHOLTZ. That is all.

WILLIAM SAUSEN, called as a witness on behalf of the Defendant, after having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. WARNHOLTZ:

Q. Will you kindly state your name?
A. William Sausen.
Q. Spell it and speak louder, please. How do you spell your last name?
A. S-a-u-s-e-n.
Q. Where do you live, Mr. Sausen?
A. 2138 Surrey Court.
Q. Surrey?
A. That is right; Surrey Court.
Q. In Chicago?
A. That is right.
Q. Mr. Sausen, are you acquainted with Hans Max Haupt, the defendant?
A. Well, I am slightly acquainted with him.
Q. Do you see him in the courtroom now?
A. Yes, sir.
Q. Will you point him out, please?
A. Right there, sir [indicating].
1082 Mr. WARNHOLTZ. The record will indicate the witness points out the defendant in the courtroom.
Q. I call your attention to Friday, June 26, 1942, and will ask you if you saw Hans Haupt on that day or evening of that day?
A. I did see Mr. Haupt that evening.
Q. And at about what time?
A. Oh, about 10 oclock, I should say.
Q. About 10 o'clock at night?

A. That is right.
Q. Where was that?
A. That was in Smokenberg's Tavern.
Q. In a tavern?
A. That is right.
Q. Where was that tavern located?
A. 2466 Lincoln Avenue.
Q. In Chicago?
A. That is right.
Q. Did you at that time have a conversation with him?
A. Yes; we had conversation—one minute, please. Just excuse me.
Q. Was he in the tavern before you arrived, or did you arrive first?
A. Mr. Haupt was in the tavern before I arrived.
Q. And what happened when you came into the tavern?
A. Well, when I came in the tavern, Mr. Smokenberg says, "Here he comes now" to Mr. Haupt. Then Mr. Haupt
1083 introduced himself to me, and he says—he asked me if I would like to work for him as a painter, and I says, "Yes, I would like to; but not right now. I am busy with having a couple of days." And then he says to me, he says, "Well, I will let you know in a few days where you shall go to work for me."
Q. Did he say when—the time he may be with you?
Mr. Woll. He started this work on Wednesday or Thursday of the following week.

By Mr. Warnholtz:

Q. And all that was Friday?
A. That is right.
Q. June 26, 1942?
A. That is right.
Mr. Warnholtz. That is all. You may cross-examine.
Mr. Hurley. No cross-examination.
Mr. Warnholtz. Mr. Graf.

John Graf, called as a witness on behalf of the Defendant, after having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Warnholtz:

Q. Will you kindly state your name?
A. John.
1084 The Court. John what?
The Witness. John Graf.
Mr. Warnholtz. G-r-a-f?
The Witness. Right.

Mr. WARNHOLTZ. Kindly talk louder, Mr. Graf.

The WITNESS. All right.

Q. Where do you live?

A. 3618 Jannsen Street.

Q. In Chicago?

A. In Chicago.

Q. How long have you lived there?

A. Six months.

Q. How long have you lived in Chicago?

A. Since 1923.

Q. Since 1923. Do you know the defendant Hans Max Haupt?

A. Yes; I do.

Q. Do you see the defendant now in this courtroom?

A. Yes; I do.

Q. Will you point him out, please?

A. There he is, right there [indicating].

Mr. WARNHOLTZ. The record will indicate the witness points to the defendant Hans Max Haupt in the courtroom.

Q. Mr. Graf, I refer you to late in the evening, about 10:30 or so, of Friday, June 26, 1942, and ask you if you saw Hans Max Haupt on that day?

1085 A. Yes, I did.

Q. And where did you see him?

A. In the Atlantic Hotel.

Q. Do you remember what was the occasion for your being there?

A. I was at a meeting.

Q. A meeting of what?

A. A German Day Association.

Q. Which was held in the Atlantic Hotel?

A. That is right.

Q. Are you a member of that organization?

A. Yes, sir; I am.

Q. Are you an officer of the organization?

A. No; I am not.

Q. Were you at that time?

A. Yes; I was.

Q. Do you know the objects of the German Day Association?

A. Yes; I do.

Q. What are they?

A. Furthering German culture; German-American culture, and further helping out and giving aid to just German-American people.

Q. Does this Association engage in any activities during the year?

A. Well, we hold a one-day, which we celebrate.

1086 Q. One day in the year?

A. That is right.

Q. Where has that been held in Chicago?

A. At different places.

Q. During the last ten or fifteen years?

A. Yes.

Mr. FINN. I object to that.

The COURT. Let him answer.

The WITNESS. Riverview Park and Harm's Park.

By Mr. WARNHOLTZ:

Q. Riverview and where?

A. Harm's Park.

Q. Do you know approximately the attendance at such festivals?

A. About ten thousand each year.

Mr. FINN. I object.

The COURT. Sustained.

The WITNESS. About ten thousand.

Mr. FINN. I move to strike the answer.

The COURT. It may be stricken.

By Mr. WARNHOLTZ:

Q. Do you know what happens to the proceeds of such festivals?

Mr. HURLEY. I object to that, if the court please. I don't see the materiality.

The COURT. As far as I can see, you are just going off on the by-roads. I don't see any connection.

1087 Mr. WARNHOLTZ. Well, it happens, if the court please, that the District Attorney brought this up and referred to associations that Hans Haupt was connected with, if I am not mistaken; that they were here in Chicago, for the purpose of taking over utilities and the like, and blowing them up, and I want to show concerning the organizations he belonged to, they were not engaged in blowing up anything. It is in the nature of impeaching the evidence of the assertions made.

Mr. HURLEY. No mention was made of this or any organization or that he made those statements; that organizations of Germans would go into these utilities in this country to do that. There was no mention of any organization in connection with that whatever.

Mr. WARNHOLTZ. If I remember correctly, Mrs. Fishman stated the associations Mr. Haupt was connected with had people in these various utilities, et cetera, places, to blow them up in time of war.

Mr. HURLEY. She didn't say organizations, as I recall it.

Mr. WARNHOLTZ. She didn't point out the particular ones.

The COURT. Well, the objection is overruled.

By Mr. WARNHOLTZ:

Q. Will you state what happened to the proceeds, if any,
1088 of these festivals which were held once a year by the German Day organizations?

A. Held for charity mainly, for the German Aid Society.

Q. For charity?

A. That is right.

Q. Do you know how long that German Aid Society has been active in Chicago?

A. More than ninety years.

Q. Nineteen years?

A. Ninety years; not nineteen, but ninety—ten less than one hundred.

Q. When you saw Hans Max Haupt on that day at 10:30, he was in the Atlantic Hotel Friday night, June 26, 1942, did you have a conversation with him?

A. Yes; he came up to me and talked to me.

Mr. WARNHOLTZ. That is all. You may cross-examine.

Cross-examination by Mr. HURLEY:

Q. Mr. Graff, I didn't get your address. May I have your address, please?

A. 3618 North Jannsen.

Q. How do you spell that?

A. J-a-n-n-s-e-n.

Q. What is your business or occupation?

A. Furrier.

Q. What?

A. Furrier.

Q. How long have you lived in Chicago?

A. Since 1923.

1089 Q. Prior to that time, where did you live?

A. In the Old Country.

Q. What Old Country?

A. In the Old Country, in Germany.

Q. Did you serve in the last war?

A. Yes; I did.

Q. Were you a member of the German World War Veterans Association?

A. No; I am not.

Q. You say you were an officer of the German Day Association, is that correct?

A. Yes.

Q. Now, were you an officer of any other organization, German organization?

A. No.

Q. Were you connected in any way with the Kyffhauser-Hilf-Sweck-Bund?

A. Is that Kyffhauser-Hilf-Sweck-Bund?

Q. Yes.

A. Are you sure? Can you read it?

Mr. WARNHOLTZ. Kyffhauser-Hilf-Sweck-Bund.

The WITNESS. Well, no such name, there is no such organization.

Mr. HURLEY. Well, do you recognize that name at
1090 all?

The WITNESS. There is the name, but it is a different organization, the way you spell it, we pronounce no such name.

Q. What is the correct name?

A. I don't know what you mean. You are telling me a name, and I will say yes or no.

Q. What is it? Well, do you know of any organization?

A. There is the Kyffhauser, you mean? You know, but I don't know what you mean, which one you mean.

By Mr. FINN:

Q. Well, was there an organization which was organized for the collection of a fund to send back to Germany to relieve suffering, et cetera.

A. There was an organization, but I don't know if money was only sent to Germany. I think it was used for the prisoners of war in this country.

Q. You mean German prisoners of war in camps?

A. In this country.

Q. Were you a member of that organization?

A. I was not a member; no.

Q. Did you ever do any collecting for them?

A. Yes; I did.

Q. How long did you do collecting for that organiza-
1091 tion?

A. Well, I can't say for certain, but probably it was three or four months.

Q. Were you also a member of an organization known as the Geneva Association?

A. No.

Q. Did you ever participate in their activities in any way?

A. No.

Q. Were you also a member of an organization known as the Teutonia?

A. Yes.

Q. What is that organization?

A. A Glee Club; a singing society.

Q. When did you join that organization?
A. In 1931.
Q. Did that organization retain its same name at all times?
A. Yes, since 78 years; it is the oldest singing society in Chicago.
Q. Were you also a member of an organization known as the North Diether Burger?
A. Spell it.
Q. D-e-u-t-s-c-h-e-r K-o-b-s-u-n H-e-c-h-a-n-d?
A. I can't get it out of that name.
Q. Were you a member of that organization, or
1092 one by a similar name?
A. No, sir—yes, sir, we——
Q. What was that?
A. That was a German business organization. A German-American, I want to say.
Q. Now, what time was it on Friday that you saw Mr. Hans Max Haupt?
A. Well, it was, oh, probably nine or ten o'clock, eight-thirty to ten.
Q. Where was it you saw him?
A. Atlantic Hotel.
Q. That is in the evening, I take it, is that correct?
A. That is right.
Q. You didn't see where he went after that, I take it?
A. No; I don't know.
Q. Were you ever a member of Tutonia Society?
A. Tutonia Singing Society?
Q. Were you ever a member of the German-American Bund?
A. No.
Q. Was Mr. Haupt alone at the meeting, or was there anyone else with him?
A. I can't say, there were plenty of people there; if he was alone or not, I don't know.
Mr. HURLEY. All right, that is all.
1093 Mr. WARNHOLTZ. That is all.

By Mr. HURLEY:

Q. Where is your place of business?
A. 1012 Belmont.
Mr. HURLEY. That is all.
Mr. WARNHOLTZ. Mr. Schoenfeld.

JOHN SCHOENFELD, called as a witness on behalf of the Defendant, after having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. WARNHOLTZ:

Q. Will you kindly state your name?
A. John Schoenfeld.
Mr. WARNHOLTZ. Louder, kindly, so that the Jury can hear you.
Q. Spell your last name.
A. S-c-h-o-e-n-f-e-l-d.
Q. Schoenfeld?
A. Yes, sir.
Q. Where do you live, Mr. Schoenfeld?
A. 1885 North Avenue.
Q. Chicago?
A. Chicago.
Q. What is your business?
A. I am working for a carbon paper company as foreman.
Q. How long have you lived in Chicago?
1094 A. Fourteen years.
Q. Do you know the defendant Hans Max Haupt?
A. I do.
Q. Do you see him in the courtroom now?
A. Yes, sir.
Q. Will you kindly point him out?
A. Right over there.
Mr. WARNHOLTZ. The record will indicate that the witness points out the defendant Hans Max Haupt in the courtroom.
Q. I call your attention to June 27, 1942, Saturday, and will ask you what, if any, transactions you had with Hans Max Haupt that day?
A. I gave him a check, a cashier's check, for $101.
Q. Where was that when you gave him the check?
A. It was in my building.
Q. Where was that building located?
A. 1916 Wellington.
Q. Wellington Avenue, Chicago?
A. Yes, sir.
Q. About what time of day was it, Saturday?
A. About 11 o'clock in the morning.
Q. And where did you get the check from?
A. I bought it from the Lake View Trust and Savings Bank.
1095 Q. On what day?
A. The day before.
Q. And what was the purpose of your giving this check to Mr. Haupt?
A. He did some work, some plastering work in my flat.
Q. At that particular address on Wellington Avenue?
A. Yes, sir.

Q. State, if you know, when that work was done and by whom?
A. Mr. Eggert did it. He worked for Mr. Haupt.
Q. Do you know what day of the week?
A. It was the week before; I couldn't tell you exactly.
Q. I will show you a check marked "Defendant's Exhibit 6" for identification, and I will ask you to examine it and tell me if that is the check you gave Mr. Haupt on that morning?
A. Yes, sir; that is the check.
Q. Did you see Mr. Haupt at any other time during the week, from Monday, June 22nd, up to Saturday, June 27th?
A. No.
Mr. WOLL. Is his answer "No"; he dropped his voice.
Mr. WARNHOLTZ. His answer is "No"; is that right?
1696 The WITNESS. No.

By Mr. WARNHOLTZ:

Q. When did you give him the check, or when you gave him the check, did you observe the demeanor of Mr. Haupt? Did you have some kind of a conversation with him at that time?
A. He was feeling good. We talked about the job.
Q. Could you state whether or not he seemed to be depressed or carefree?
A. No; he was not depressed.
Mr. HURLEY. I object.
The COURT. Sustained.
Mr. HURLEY. I move to strike the answer.
The COURT. Oh, it may stand.
Mr. WARNHOLTZ. Just a minute. That is all.
Mr. HURLEY. No cross-examination.
(Witness excused.)
Mr. WARNHOLTZ. Mrs. Saure.

GERDA MELIND SAURE, called as a witness on behalf of the Defendant, after having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. WARNHOLTZ:

Q. Your name is Mrs. Gerda Melind Saure?
1697 A. Yes, sir.
Q. You have testified in this trial before today—a day or two ago?
A. Yes, I have.
Mr. WARNHOLTZ. Kindly speak louder, Mrs. Saure, so that the Jury can hear you.
Q. A day or two ago, you testified, Mrs. Saure, that you called at the residence of Hans Max Haupt on Tuesday evening, June 23rd, 1942; do you recollect that?

A. I do.

Q. When you arrived at the residence of Mr. and Mrs. Haupt, who was present at that time?

A. Mr. and Mrs. Haupt.

Mr. WARNHOLTZ. Louder, please.

A. A friend was sitting in the living room.

Q. The friend sitting in the living room, was the party you later on identified as Mr. Zermer?

A. That is right.

Q. Was Herbert Haupt present at the time when you came?

A. No; he wasn't.

Q. What did you do immediately upon arriving?

A. I went in the kitchen with Mrs. Haupt.

Q. You went in the kitchen with Mrs. Haupt?

1098 A. Yes.

Q. Well, did you say something?

A. I asked her where Herbert was, and she said he had gone out to meet me at the streetcar.

Q. And then what took place?

A. Well, Mr. Haupt went out and said he would see if he could locate him, and tell him I was there, which he did; then they both came back together.

Q. After Herbert came together with his father, did he leave the house again until about 10:30 when he left to go with you?

A. No; he didn't leave until that time with me.

Q. While you were there, did Herbert Haupt eat anything?

A. No; he didn't.

Q. Had Herbert Haupt met you prior to that date at some streetcar corner?

A. No; he hadn't; he just called me on the telephone.

Q. And what was your conversation?

A. Well, he told me he would like to see me, if I could come over to the house that evening.

Q. Did he know where you were working at the time?

A. Yes; he did.

1099 Q. What means of transportation did you take, and where were you working?

A. At the Bismarck Hotel Beauty Salon.

Q. What means of transportation did you take to get there?

A. Clark Street car.

Q. Clark Street car?

A. Yes, sir.

Q. Where did you get off?

A. At Webster Avenue.

Q. In going from the Clark Street car at Webster Avenue on

Clark Street, to Fremont and Webster, must you necessarily pass Lincoln Avenue and Webster?

A. Yes.

Q. You must pass that corner?

A. Yes.

Q. Did you walk?

A. Yes; I did.

Q. In walking over, you did not see Herbert Haupt?

A. No; I didn't.

Q. Do you know the birthday of Herbert Haupt?

A. I believe it was December 21.

Q. December 21; did you know Herbert Haupt on December 21, 1941?

A. Yes; I did.

Q. Do you recall what happened on or about that date?

A. No; I can't recall that.

Q. Did you at any time go out with Herbert Haupt in an automobile?

1100 A. Yes; I did.

Q. When did you first go out with him in an automobile?

A. Oh, I believe he received a car—he got a new car for his birthday.

Q. For his birthday?

A. For his 21st birthday, I believe it was.

Q. In what year was that?

A. 1941.

Q. What type of car was that?

A. I believe that car was a Plymouth car.

Q. And prior to that, had you been out with him in an automobile?

A. Yes, I had—in his father's car.

Q. What type of car was that?

A. That was an Oldsmobile.

Q. When did Herbert leave Chicago?

A. He left in 1941, I believe.

Q. What year?

A. 1941, I believe.

Q. 1941, about when?

A. June.

Q. June?

A. Yes.

Q. Do you wish to correct your statement as to when it was?

A. It must have been 1940, then.

Q. 1940, instead of 1941?

A. Yes.

Q. I now refer you to the fall of 1939, and will ask you if
1101 you at that time had a conversation with Erna Haupt, the wife of Hans Haupt, together?

A. Well, in the fall—

Mr. HURLEY. I object to that.

The COURT. What is that period? Read that question.

(Last preceding question read by the reporter.)

The COURT. What relevancy has that?

Mr. WARNHOLTZ. I will show the sentiments appearing at that time, that were expressed at that time, about the United States.

The COURT. Overruled.

By Mr. WARNHOLTZ:

Q. Who was present at that time?

A. I was with Herbert and Mr. and Mrs. Haupt. It wasn't exactly the fall—somewhat later.

Q. Somewhat later during the year?

A. Yes.

Q. What was said, if anything was said at the time by Hans Haupt or by Mrs. Erna Haupt?

Mr. HURLEY. Wait a minute. I will object unless the place is fixed.

By Mr. WARNHOLTZ:

Q. Where was that?

A. That, I believe, was at a dance or club Mr. Haupt belonged to gave; I don't know where it was.

Q. Well, was it in Chicago?

A. Yes, it was.

Q. What was the occasion of your being together?

1102 A. Well, Herbert and I had a date that evening to go to a dance and the folks were there.

Q. At some dance in Chicago?

A. Yes, sir.

Q. What did Erna say?

Mr. HURLEY. I object; who was present?

By the COURT:

Q. Who was holding the dance; who gave the dance?

A. Well, some club; I don't know exactly what it was.

Q. Can't you tell us where it was?

A. I believe in the Germania Clubhouse; I am not certain.

Q. Who all were there; Mr. and Mrs. Haupt, Herbert Haupt and yourself?

A. Well, there were a lot of people there.

Q. Name some of them?

A. I can't name any.

Q. In your immediate company?

A. That was all; Herbert and I and his parents.

Mr. HURLEY. If the court please, at this time I would like to make a request outside the presence of the Jury, to find out what this line of testimony is.

The COURT. Step into the jury room, ladies and gentlemen.

1103 Mr. HURLEY. I also suggest at this time that the witness step outside of the courtroom.

The COURT. Step into the hallway, madam, outside the door.

(Thereupon the following proceedings were had in the courtroom outside the presence and hearing of the Jury and the witness:)

The COURT. What is the ground for your objection?

Mr. HURLEY. No relevancy showing the purpose of this line of proof at this time and I am certainly going to object to any testimony here in which Erna Haupt is in effect testifying for this defendant. That is one of the things I am going to object very strenuously, to testimony of that type.

The COURT. What do you intend to prove?

Mr. WARNHOLTZ. I intend to prove this, if the court please. It has been brought out heretofore that Erna Haupt went to Germany immediately prior to the outbreak of the war between Germany and Poland. It was brought out heretofore that Erna Haupt went to Germany as a member of a group of people who belonged to the German War Veterans organization. That point

1104 was brought out, for the purpose, as far as I can see, to show that the Haupts were un-American, and I want to show here, when she got back, after taking one of those tramp steamers in order to get back after the war had broken out, just about that time, she made the remark, "She was glad she was back in America," and that Hans Haupt was present, and there was nothing derogatory stated against the United States at the time. That is the purpose of my examining this witness along the line I have done just now.

Mr. FINN. Your Honor, that is entirely irrelevant to the issues, giving his mental status and the condition of Haupt, his intention, not Haupt's wife. Assuming Haupt's wife is a perfect American, that wouldn't show Haupt himself was an American or un-American.

Mr. BERTRAM. That is quite to the contrary, to Mr. Woll's statement a while ago when you were trying to get in derogatory statements. Mr. Woll made the statements——

Mr. FINN. That is right, by the defendant himself, not by his wife.

Mr. WARNHOLTZ. He was present at the time.

Mr. FINN. That wouldn't make any difference. The mere facts that she made those statements, and he was present.

1105 Mr. WARNHOLTZ. It certainly shows he did not disagree with her.

Mr. FINN. I don't think so at all.

The COURT. How much of this do you have.

Mr. WARNHOLTZ. That is all.

The COURT. Have you any other witness, or only this one on that? I am inclined to let you show it, but I have a very grave doubt about its competency. I will let you show it.

Bring in the Jury.

(Thereupon the following proceedings were had in the court-room, in the presence and hearing of the Jury:)

The COURT. Proceed.

By Mr. WARNHOLTZ:

Q. Mrs. Saure, at the time of this meeting with Hans Haupt and his wife, Erna Haupt, and Herbert Haupt and yourself were present at some dance, what was the conversation between yourself and Mrs. Haupt in the presence of Hans Haupt?

A. Well, I had known Erna Haupt had taken a trip to Germany. I asked her how she liked it out there, and how she enjoyed her trip, and she said she enjoyed her trip very much, inasmuch as she had a chance to see her folks, but she was very happy to be back in the United States.

Q. Did Hans Haupt say anything then?

1106 A. Well, he said, he made some remark, he said, "Well, there is no place like home, and we are certainly glad to have you back."

Mr. WARNHOLTZ. That is all. You may cross-examine.

Mr. HURLEY. No. cross-examination.

Mr. BERTRAM. If the court please, at this time, we would like to offer for the purpose of impeachment, the testimony of John Majerczak.

Mr. HURLEY. Wait just a minute. This is something that should be outside the presence of the Jury.

The COURT. Step in the jury room, ladies and gentlemen.

(Thereupon the following proceedings were had in the court-room outside the presence and hearing of the Jury:)

Mr. BERTRAM. I wish to offer the testimony of the witness who testified for the Government, at the present trial, John Majerczak. I wish to offer his testimony at the former trial before your Honor in the insanity hearing for the purpose of impeachment of his testimony at the present trial, given at the present trial. The testimony is about ten pages long, and it shows he did not testify

concerning anything of the alleged conversation, which he
1107 gave in the present trial from the witness stand. It also shows that he stated that he did not hear any other conversations and he was asked general questions which would have permitted him to have testified to the conversations that he has now testified to at the present trial.

Mr. FINN. We will object to that, your Honor.

Mr. BERTRAM. And also shows he stated that he did not pay any attention to any of the other conversations other than those that he testified to at the insanity hearing.

The COURT. Let me see the testimony.

Mr. BERTRAM. It begins at page 226 and runs for ten pages.

The COURT. The question at the top of page 229 is:

"Question: At that time, did you have any conversation with Hans Haupt yourself, concerning sanity or insanity?

"Answer: Directly; no, sir.

"Question: Did you hear anyone have any conversation with Haupt?

"Answer: Yes, sir."

The COURT. I suppose I would infer——

Mr. BERTRAM. I want to offer the entire testimony of those ten pages.

1108 The COURT. If you will please listen to what I say.

Mr. BERTRAM. I am sorry.

The COURT. At the top of page 229 is this question or these questions:

"Question: At that time, did you have any conversation with Hans Haupt yourself concerning sanity or insanity?

"Answer: Directly; no, sir.

"Question: Did you hear anyone have any conversation about it?

"Answer: Yes, sir."

The COURT. Now, the natural inference would be that conversation was limited to sanity or insanity.

Are you offering the cross examination, too?

Mr. BERTRAM. Yes, your Honor; the entire ten pages.

Mr. FINN. There is nothing in the cross-examination I can find.

The COURT. The only thing it tends to impeach at all is this question and answer on redirect examination by Mr. Warnholtz:

"There were a number of conversations between Hamby
1109 and Hans Haupt; you paid no attention to that, is that right?

"Answer: Yes, sir."

Mr. WOLL. May I say this, if your Honor please, we must keep in mind we are talking there about sanity of the man, what he did, and what he heard, conversations with Hans Haupt and Hamby.

Of course, we asked questions and there were a number of other conversations.

The COURT. Where is the transcript; where have you laid a basis for this in the transcript?

Mr. BERTRAM. For impeachment, he was asked distinctly this, whether or not he had testified at the sanity trial and he said, "Yes, he had." Then he was asked——

The COURT. Let me see the transcript. Where is the place you find it? Where have you laid the foundation for that?

Mr. BERTRAM. I will find it, your Honor. This examination was quite extensive on the present trial.

The COURT. I want the place where you said to Mr. Majerczak, o whatever his name was, did you on the sanity hearing in this courtroom on or about a certain day, naming it, and in the presence of so and so and so and so, say this: that is the foundation for impeachment. Find that. We will take a short recess.

1110 Mr. BERTRAM. All right. Thank you.

The COURT. And the answer is, "Yes," "No," or "I don't remember."

(Thereupon a recess was had, and on the coming in of court after recess, the following proceedings were had in the courtroom, outside the presence and hearing of the Jury:)

The COURT. I don't see your foundation. As a matter of fact, I wouldn't have allowed him to tell that in the sanity hearing.

Mr. BERTRAM. I ask, if the Court please, the court reporter mark these pages.

Mr. WOLL. I might say, if the court please, I avoided that particular thing. I didn't want that. I stayed away from asking anything about that.

The COURT. You didn't lay the proper foundation. Objection sustained. Aside from that, there isn't anything impeaching except possibly this one question mentioned.

Mr. BERTRAM. I beg to differ, if the court please, and I offer these pages in evidence, and I ask the reporter to mark them.

1111 The COURT. Which pages?

Mr. BERTRAM. I feel I would have to offer all the testimony.

The COURT. Of what? This paper he had?

Mr. BERTRAM. Of the insanity hearing; yes. May I have them marked, commencing with the beginning of the testimony of John Majerczak.

The COURT. Any objection?

Mr. FINN. Yes, your Honor.

The COURT Objection sustained.

Mr. BERTRAM. Beginning on page 226 to the end of his testi-

mony on to the end of the page 236, will you mark those eleven pages, Mr. Reporter, or may I read them in the record right now. I am willing to do it either way, whichever is proper.

The COURT. Well, I suppose you will be taking that up, won't you?

Mr. BERTRAM. Probably.

The COURT. Then you will have to take the insanity matter up, won't you?

Mr. BERTRAM. I don't know, your Honor. I merely want to get the present record of this trial.

The COURT. You offer part of so and so of that transcript. You don't need to copy it over again. You both have a copy of it.

1112 Mr. BERTRAM. We don't need to read it in the record then.

Then mark the pages beginning with 226 and ending at page 236.

The COURT. That isn't the way. You couldn't put it in that way except by agreement.

Mr. BERTRAM. I will be very glad to read it into the record now.

Mr. FINN. We won't agree to that.

The COURT. You are not going to get into this record those pages.

Mr. BERTRAM. Just mark the pages, please.

The COURT. There is an objection, and I sustain the objection.

Mr. BERTRAM. Well, mark the pages.

The COURT. Those are not marked as exhibits in this case.

Mr. BERTRAM. I understand that.

The COURT. You offered certain pages of the record and I sustained the objection. You are not going to have them marked again. If you take it up, then is the time to put it in your record.

Mr. BERTRAM. It is understood I can put them into the record later.

1113 The COURT. If you don't take up the other record.

Mr. BERTRAM. I don't want to make a mistake, your Honor.

The COURT. Bring in the Jury.

(Thereupon the following proceedings were had in the court-room in the presence and hearing of the Jury:)

The COURT. Proceed.

Mr. BERTRAM. If the court please, at this time, I would like to offer in evidence certain official documents under seal of the Secretary of the State of Illinois, the first one is marked Certificate No. 41249, which I will ask the court reporter to mark as "Defendant's Exhibit 8" for identification.

(Thereupon the document was marked as requested "Defendant's Exhibit 8" for identification.)

Mr. BERTRAM. Another document, which bears certificate No. 41250, which I will ask be marked "Defendant's Exhibit 9" for identification.)

(Thereupon the document was marked as requested "Defendant's Exhibit 9" for identification.)

Mr. BERTRAM. Another document, which bears Certifi-
1114 cate No. 41231, which I will ask you to mark "Defendant's Exhibit 10" for identification.

(Thereupon the document was marked as requested, "Defendant's Exhibit 10," for identification.)

Mr. BERTRAM. I may state to the court that these are official records of the Secretary of State, under the great seal of the Secretary of the State of Illinois, concerning two automobiles that had been referred to by various witnesses in the present case, and I offer them in evidence under Title 20-A, Judicial Code, Section 688.

Mr. HURLEY. The only objection we make, they are offered as certified copies of the record in the office of the Secretary of State; however, we don't want to admit the statements contained various applications filed with the Secretary of State are the truth.

The COURT. What is the purpose of your offer?

Mr. BERTRAM. To show the type of the various—of the two automobiles concerned therein. They show the names and addresses of the owners, and they show the transfers of them. I think it is very material in this case on the evidence the prosecution offered with respect to the automobiles.

Mr. WARNHOLTZ. The automobile, which the Government claims he bought for the purpose of allowing Herbert to
1115 transport dynamite and TNT was, in fact, bought by his father to replace the automobile Herbert had left behind which was somewhat new when Herbert left Chicago, which thereafter was taken by the father and used by him.

The COURT. They may be received.

(Thereupon the documents so offered in evidence were marked and received in evidence as "Defendant's Exhibits 8, 9, and 10," and are in words and figures as follows, to wit:)

1116 Mr. BERTRAM. At this time, if your Honor please, I would like to read papers, perhaps certain parts and portions, not every word in the exhibit.

Defendant's Exhibit 8, received in evidence, is a certificate No. 41249, concerning the title and transfers of an Oldsmobile automobile.

The second is a photostat page of part of that exhibit and shows

the name of Hans Haupt; Post Office address, 4444 North Western Avenue, Chicago, Illinois; name of car, Oldsmobile.

On April 7, 1939, application was made to the Secretary of State for a certificate of title upon the question—I acquired the above car and it says new, and then blank—then it says, I think it is crossed out—in other words, a cross is opposite the words "used car."

On April 7, 1939, from Norman C. Town, Incorporated, 5137 Broadway, Chicago, Illinois. Style of body, two-door TR. Year built—1936.

The next photostatic document which has a heading, "Certificate of Title of a Motor Vehicle," shows the name of Hans Haupt; Post Office address, 4444 North Western Avenue, Chicago. Name of car, Oldsmobile. Factory No. 138934. Style of body, 1117 two-door, TR. Year built, 1936. Signature of owner, Hans Haupt. It bears the date of issuance on April 24, 1939. And that is the certificate of title here, a photostatic copy thereof from the Secretary of State.

The next photostatic copy, part of that exhibit, from which I will read on the reverse side thereof, is that of July 28th, 1941: For value received, I hereby sell and assign to H. J. Heide, 300 Scottswood Road, Riverside, Illinois. Kind of car as shown on the front of that certificate, Oldsmobile sedan, No. 138934, two-door, built in 1934. Signature of owner, Hans Haupt. And the date, July 28, 1941.

Now, on the next exhibit—that last exhibit was 9, or Defendant's Exhibit 8, and the next exhibit, rather, is Defendant's Exhibit 9, bearing certificate No. 4150, and shows the name H. J. Heide, 300 Scottswood Road, Riverside, Illinois; name of car—this is an application for a certificate of title.

1118 Name of car, Oldsmobile. Style of body, two door. Year built, 1936. Factory number, 138934. Signature of owner, H. J. Heidi. Date of application of certificate of title, July 28, 1941. Requesting the issuance of a new certificate of title to H. J. Heidi.

The application shows, "I acquired the above car, used car, on July 28, 1941, from Hans Haupt, whose address is 2234 North Fremont, Chicago, Illinois," and subscribed and sworn to on July 28, 1941.

The next document attached to that exhibit is the certificate of title issued by the Secretary of State of Illinois to H. J. Heidi of 3 Scottswood Road, Riverside, Illinois, for the same automobile, Oldsmobile; and year built, 1936; and factory number, 138934; bears signature of H. J. Heidi, and it was issued by the Secretary of State on August 1, 1941.

The next document which is in evidence as Defendant's Exhibit 10, regarding the Plymouth Sedan automobile, shows that application for certificate of title was made in the name of Herbert Haupt. It shows the name of Herbert Haupt and the address 1240 Hohlfelder Road, Glencoe, Illinois; name of car, Plymouth; style of body, sedan; year built, 1941; year acquired the above
1119 car new shows a cross mark opposite new on November 8, 1940, from Deware Motors, Inc.; address, 6959 N. Western Avenue, Chicago, Illinois; and subscribed and sworn to November 8, 1940.

Then, the next document is certificate of title. That is the last photostat in the exhibit. The certificate of title to motor vehicle, name, Herbert Haupt, and 1240, address 1240 Hohlfelder Road, Glencoe, Illinois; name of car, Plymouth sedan. Year built, 1941. Signature, Herbert Haupt. Issued——

Mr. FINN. What was the date of it?

MR. BERTRAM. November 20, 1940, by the Secretary of the State of Illinois, which is a certificate of title.

The next document attached to this exhibit is application for corrected certificates and shows that on January 5, 1942, Hans Haupt made application to the Secretary of State for certificate of title on this same Plymouth automobile.

And then the last document shows the certificate of title under date of February 21, 1942 to Hans Haupt by the Secretary of State of Illinois, address 2234 Fremont Street, to the same Plymouth automobile.

Mr. FINN. May I see those, please?

1120 The COURT. Gentlemen, the judges of this District Court have called a meeting for this hour and I will accordingly have to ask you to return at 2:00 o'clock.

How much time do you think you want?

Mr. WARNHOLTZ. I would judge, Judge, not to exceed two and a half hours, and possibly two hours only. That depends upon the cross-examination, your Honor.

The COURT. All right, I am going to ask you to come back at 2:30. I shall have to make a grand jury call, which will take about half an hour. Do not come back until 2:30.

We will recess at this time, ladies and gentlemen until 2:30. Return here at 2:30 this afternoon.

(Whereupon an adjournment was taken to the afternoon of the same day, Monday, June 5, A. D. 1944, at the hour of 2:30 o'clock P. M.)

1121 In the District Court of the United States for the Northern District of Illinois, Eastern Division, at Chicago

UNITED STATES OF AMERICA

vs.

HANS MAX HAUPT

Before Hon. JOHN P. BARNES, Judge and a Jury

Monday, June 5, 1944, 2:30 o'clock P. M.

Parties met pursuant to recess.

Counsel present: Mr. J. Albert Woll, United States District Attorney for the Northern District of Illinois, Eastern Division, at Chicago, and Mr. Earle C. Hurley, and Mr. Richard G. Finn, Assistant United States District attorneys for the Northern District of Illinois, Eastern Division, at Chicago, appeared for the United States of America;

Messrs. Paul A. F. Warnholtz, Frederick J. Bertram, appeared for the Defendant.

* * * * *

1122 The COURT: Bring in the Jury.

(Thereupon the following proceedings were had in the courtroom in the presence and hearing of the Jury:)

The COURT. Proceed, gentlemen.

Mr. WARNHOLTZ. Commissioner Walker.

EDWIN K. WALKER, called as a witness on behalf of the Defendant, after having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. WARNHOLTZ:

Q. Will you kindly state your name, sir?

A. Edwin K. Walker.

Q. You are the United States Commissioner for this District, Commissioner?

A. I am.

Q. You appear here today pursuant to a subpoena duces tecum served upon you?

A. Yes.

Q. Have you brought with you the papers mentioned in the subpoena duces tecum?

A. I have.

1123 Q. May I see that, please? These papers are the official records of your office?

A. They are.

Q. And were prepared under your supervision and jurisdiction?

A. Yes.

Q. I call your attention to this paper, which I will ask to have marked "Defendant's Exhibit 11" for identification.

(Thereupon the document was marked as requested, "Defendant's Exhibit 11," for identification.)

Q. (Continuing.) And will ask if the signature appearing at the bottom of this is your signature?

A. It is.

Q. And this is a warrant which was issued by you, Commissioner?

A. Yes; it is.

Q. Against Hans Max Haupt?

A. Yes.

Q. And this warrant was issued pursuant to a complaint which I now hand you, which I ask that it be marked "Defendant's Exhibit 12" for identification.

(Thereupon the document was marked as requested, "Defendant's Exhibit 12," for identification.)

1124 Q. (Continuing.) Is this the complaint pursuant to which that warrant for the arrest of Hans Max Haupt was issued, Commissioner?

A. It is; yes.

Q. I now hand back to you, Commissioner, your docket in this case, and will ask you whether or not it shows when this warrant was returned?

A. The warrant was returned on the 28th day of July 1942 It had been issued on July 17, 1942.

Q. The arrest was made on July 17th?

Mr. FINN. We can't hear you back here at all.

The WITNESS. Well, let me see that. Well, the defendant was brought before me on July 21, the warrant having been issued on the complaint filed July 17th.

By Mr. WARNHOLTZ:

Q. In the year 1942, is that correct?

A. In the year 1942.

Q. And it was returned, the warrant was returned on what date?

A. The 28th day of July 1942.

Q. 1942?

A. Yes, sir.

Q. Do your records indicate when the first arrest of this prisoner was had before you?

A. It does.

Q. And when was that date?

A. July 21.

Q. What happened at that proceeding?

A. At that proceeding, the defendant, Hans Haupt was brought before me, and was arraigned by the reading of the warrant to him, and he entered a plea of Not Guilty, and the Government was not ready to proceed and the hearing was set for August 5, 1942, at 2 P. M.

Q. Does your record, Mr. Commissioner, show whether or not on that first arraignment, the defendant was represented by counsel?

A. Yes; it showed he was not represented by counsel. My entry on that, in my handwriting is, just the defendant in person. He had no attorney at the hearing.

Q. On the date, August 5, the date to which the first arraignment was continued, does it show whether or not the defendant at that time was represented by counsel?

A. It does, yes. It shows that he was represented at that hearing by one Ben Short.

Q. And then does your record indicate when this matter was finally disposed of as far as your office was concerned, Mr. Commissioner?

A. Yes.

Q. What was that date; what was the disposition thereof?

A. September 7, 1942.

Q. Does your record indicate as to the charge that was brought against the defendant in the original complaint?

A. Yes; it is incorporated in the complaint here and in the warrant. Do you want that?

Q. Have you got the statute and title of the section and the code?

A. There is referred here, and it is mentioned by reference of the phraseology in the complaint where there is a violation of Section 551, Title 18, United States Code.

The Court. What is the materiality of this?

Mr. Warnholtz. I beg your pardon?

The Court. What is the materiality of this?

Mr. Warnholtz. To show arraignment was not had until July [illegible]. That the defendant at that time was not represented by counsel. That, however, on the continuance to August 5, the defendant was represented by counsel, and that he at that time was brought in——

Mr. Bergeram. July 21 instead of the 17th, Mr. Warnholtz.

Mr. Warnholtz. July 21.

The Court. It is immaterial to the issues now before this court and jury.

1127 Mr. WARNHOLTZ. Well, we wish to show that he wasn't arraigned until a certain date.

The COURT. I say, what is the materiality?

Mr. BERTRAM. There was considerable testimony about the date, August 5, your Honor will remember.

The COURT. What was the testimony about August 5th?

Mr. WARNHOLTZ. There were two agents from the Federal Bureau of Investigation who testified as to a conversation on that date, and the defendant was represented by counsel when these statements were obtained from the defendant.

The COURT. Oh, I see what you are talking about now.

Mr. WARNHOLTZ. I believe we can dispose of reading the defendant's Exhibit Nos. 11 and 12 into the record.

The COURT. They are offered in evidence and received and the reading is waived by either side, but you may have leave to refer to them.

Mr. WARNHOLTZ. That is all.

Cross-examination by Mr. WOLL:

Q. The arraignment on which you say took place on what day, Commissioner?

A. July 21.

Q. July 21, 1942?

A. 1942; yes.

1128 By the COURT:

Q. In whose custody was the defendant at that time?

A. He was in the custody of the Marshal pursuant to a warrant that had been issued on July 17.

Q. And he continued in the custody of the Marshal?

A. Yes, continued in the custody of the Marshal until final disposition of the case before me on September 8th.

The COURT. Anything further?

Mr. WOLL. Just one question, if your Honor please.

Q. You said the arraignment was continued until some time in August, did you?

A. No. The arraignment——

Q. The arraignment was had when?

A. The arraignment—the reading of the charge to him, and calling upon him to plead——

Q. That was continued for a hearing after arraignment?

A. That was continued for a hearing.

Q. What time did you set that hearing for?

A. Well, on July 1st, when he was first brought before me, it was postponed to August 5th, and on August 5, the Government was not ready to proceed, then it was continued to August 26th.

Q. What time was it continued to on August 5th?

A. 2 P. M., and from that date continued to September 8th.

Mr. Woll. Commissioner, I think you referred to July 1st or August 1st, did you make a mistake when you mentioned August 1st or something.

The Witness. No date of August 1st is involved. He was brought before me on complaint filed and warrant issued on July 17, brought before me July 21st, at which time a motion by the Government, it was postponed to August 5th, and on August 5th, again it was postponed to August 26th, and on August the 26th, it was continued to September 8.

The Court. When was the arraignment, what date?

A. The arraignment was July 21, 1942.

Mr. Woll. That is all.

Mr. Warnholtz. No redirect examination. Mr. Short.

Benedict J. Short, called as a witness on behalf of the Defendant, after having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Warnholtz:

Q. Will you kindly state your name?

A. Benedict J. Short.

Q. Where do you live, Mr. Short?

A. 2552 North Kedzie Boulevard.

Q. In the City of Chicago?

A. In the City of Chicago.

Q. How long have you lived in the City of Chicago?

A. Over sixty odd years; I don't recollect.

Q. Will you talk a little louder, please. It is rather hard to hear.

The Witness. I beg your pardon.

Q. What is your business or profession?

A. I am an attorney-at-law.

Q. You are engaged in the practice of law?

A. I am.

Q. Here in the City of Chicago?

A. In Chicago.

Q. How long have you been so engaged in the practice of law?

A. Fifty-four years.

Q. How many years?

A. Fifty-four.

Q. Fifty-four years in Chicago?

A. In Chicago.

Q. Mr. Short, do you know the defendant Hans Max Haupt?

A. I know him; yes; to speak to him. Know who he is, and talk to him.

Q. Do you see him in the courtroom now?

A. I don't think I could identify him.

1131 Q. You couldn't indentify him, you say?

A. I don't think I could out of all these gentlemen here I don't know whether I could or not.

Q. When and where did you see or meet Hans Max Haupt first?

A. In July 1929, I think, or 1939, with you.

Q. I call your attention to July the 29th, in the year 1942, and will ask you if on that day you had a conversation with Hans Max Haupt?

A. Yes; I did.

Q. And where was that, Mr. Short?

A. County Jail.

Q. Cook County Jail?

A. Cook County Jail; yes, sir.

Q. And where within the County Jail did you see Hans Max Haupt at that time?

A. Well, at that time he was in the hospital. At that time he was ill and he wouldn't come out of his cell, and I had to go to his cell to meet the defendant, to get him out of there, and he refused to come out.

Q. Who was present at the time?

A. You were.

Q. I was with you at the time?

A. Yes.

Q. Do you remember a conversation which you had with

1132 the Desk Clerk when we first arrived at the County Jail?

A. Some of it I do.

Mr. WOLL. I object to a conversation with a Desk Clerk, if your Honor please.

The COURT. He answered your question, he said, part of it.

By Mr. WARNHOLTZ:

Q. What was that conversation?

Mr. WOLL. Was it a conversation, if your Honor please?

The COURT. Sustained.

By Mr. WARNHOLTZ:

Q. Did you have a conversation with Hans Max Haupt?

A. I did.

Q. And who was present at that time?

A. You were.

Q. On that particular day, on the 29th day of July 1942?

A. That is the day; yes.

Q. What do you remember that occurred during that conversation and what was said?

Mr. WOLL. I object.

The WITNESS. I beg your pardon. I don't understand you.

Mr. WARNHOLTZ. I would like to know the grounds of your objection.

1133 The COURT. Step in the jury room, ladies and gentlemen.

(Thereupon the following proceedings were had in the courtroom outside the presence and hearing of the Jury:)

The COURT. Maybe, counsel, we better step in the court's chambers.

(Thereupon the following proceedings were had in the court's chambers, outside the presence and hearing of the Jury and the witness.)

The COURT. What do you propose to show by Mr. Short?

Mr. WARNHOLTZ. I propose to show that Hans Max Haupt on the 29th day of July 1942, according to a layman's opinion of Mr. Short, was insane. And I would testify to the same effect if I were not the attorney of record.

Mr. WOLL. If your Honor please, this man, this defendant had been arraigned by that time. He was charged with a criminal offense. He had an attorney, Mr. Warnholtz, who was present at the time. The conversation there was entirely under a situation which we could naturally state would be one of a self-serving nature, because of the fact that conversation had with his

1134 attorney, while the man is charged with a crime, and he was in the County Jail, and he talked about his case and other things he told his attorney.

The COURT. What date is this now?

Mr. WARNHOLTZ. July 29th, 1942, which was within three or four days of the time when Mr. Majerczak claimed he related to them the entire story of Herbert Haupt.

Mr. WOLL. Now, I might say this also, if the court please: Mr. Short was associated with Mr. Warnholtz in the trial of the first case. The date necessarily, of course, brings out the fact he was associated with the trial of the case, and he makes no intimation to the court on the first trial that, in his opinion, this man was insane.

The COURT. I don't care about that.

Mr. WARNHOLTZ. That is not true.

Mr. WOLL. Well, I will ask him questions anyhow.

The COURT. When were these conversations with Majerczak, or what do you call him; Hamby?

Mr. WARNHOLTZ. I believe they stated, your Honor, they were held four days after they came to Tier H-4—they came to H-4 on July 21 or on July 22—there was a slight conflict between

1135 the testimony of the two witnesses, as I recall it; that would fix the date of this conversation, which they claim they

had, Hamby had with Mr. Haupt, either July 25th, or July 26th, 1942.

The COURT. Well, I guess it is admissible. How much of this did you expect to have?

Mr. WARNHOLTZ. Very little. Just this one witness.

Mr. FINN. Your Honor, the question as they put to this witness, to state the conversations you had; they may be of a very self-serving nature. The witness might possibly state he did have conversations and he formed an opinion as to the mental status, and certainly he has no right——

Mr. WARNHOLTZ. The objection can be made and the grounds stated when the objection is made.

The COURT. I think he may say he had a conversation, how long it lasted, and as to whether generally he talked about them. Then you should prove what he did do and lay a foundation as to his observation, on which——

Mr. WARNHOLTZ. And his opinion.

Mr. WOLL. I don't want to have the situation come in testimony that he is innocent of this charge, and all this stuff going through a great rigamarol'——

1136 Mr. WARNHOLTZ. Mr. Short will not say that. He is a lawyer.

Mr. WOLL. I don't know what Mr. Short is going to say. I think from Mr.——

The COURT. I think your question is too broad.

Mr. WARNHOLTZ. As to the conversation, I believe, your Honor, it is too broad, and I will restrict it more as to what he observed, and how long the conversation lasted, and if during that time he formed an opinion as to whether or not this man was sane or insane.

The COURT. I think I will let you do that. Bring in the Jury.

(Thereupon the following proceedings were had in the court-room in the presence and hearing of the Jury:)

By Mr. WARNHOLTZ:

Q. Mr. Short, will you kindly state about how long the conversation lasted between yourself and Mr. Haupt and Mr Haupt and myself, on the 29th day of July 1942, in the Cook County Jail—approximately how long?

A. I would say it was about one session of the jail, maybe a couple of hours.

Q. Did you during that time form an opinion based on

1137 your observation at that time, as to whether or not Hans Haupt was sane or insane?

A. At that time I was positive he was insane, the way he acted and talked.

Q. That was your opinion?

A. At that time.

Mr. WARNHOLTZ. That is all.

The WITNESS. Thank you.

Cross-examination by Mr. WOLL:

Q. Mr. Short, you are associated in the defense of Hans Haupt, or were at the first trial, were you not?

A. At the first trial, I was associated with Mr. Warnholtz.

Q. Were you an attorney of record on that first trial?

A. I am not certain that I was. I usually do file an appearance.

Q. But you did participate in the trial?

A. Yes; I participated in it; sure.

Q. And you examined witnesses also?

A. And examined witnesses and made an argument to the Jury.

Q. Mr. Short, did you file any petition in court asking that Hans Haupt's sanity be adjudicated?

Mr. WARNHOLTZ. I object, if your Honor please.

The COURT. Overruled.

1138 Mr. SHORT. I don't think I did.

By Mr. WOLL:

Q. Did you at the time of the trial file any motion before the presiding judge, asking that an inquiry be made as to the sanity of Hans Haupt?

A. Mr. Warnholtz took care of all that. I don't think I did.

Q. Do you know whether any such petition was filed?

A. No; I don't. It was one case I bowed to him.

Q. Your best recollection is no petition was filed?

A. My best recollection.

Q. But you assisted Mr. Warnholtz in the trial of the case?

A. That is all.

Q. Mr. Short, without going through the conversation—I don't want you to do that—can you remember whether or not the conversation you had at that time was mostly in German?

A. No; I don't speak German. Mr. Warnholtz and Mr. Haupt talked in German, sure; yes.

Q. And what portion of that conversation, the time of that conversation, was devoted to talking in German?

A. Well, it is a long time, Brother, I don't recollect exactly. It was quite a bit, because Mr. Warnholtz talked in German
1139 and Mr. Haupt talked in German. All I could do was sit there most of the time.

Q. Of course, all the talking in German, you didn't understand that, did you?

A. No; I didn't know what they were saying.

Q. You don't recognize this man now, do you?

A. No, I imagine, of course, from my experience, he is over there on that side of the table.

Q. You imagine that?

A. If I met him out in the hall, I wouldn't know him.

Mr. WOLL. I thing that is all, Mr. Short.

The WITNESS. Thank you.

Redirect examination by Mr. WARNHOLTZ:

Q. Mr. Short, you saw Mr. Haupt for three weeks every day in court, did you not?

A. Yes. If it was three weeks the trial lasted, I did.

Mr. WARNHOLTZ. Yes. That is all. Thank you.

The WITNESS. Thank you.

1140 HUGO EMIL TROESKEN, called as a witness on behalf of the Defendant, after having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. WARNHOLTZ:

Q. Will you please state your name?

A. Hugo Emil Troesken.

The COURT. What is it?

The WITNESS. Hugo Emil Troesken.

Q. How do you spell it?

A. T-r-o-e-s-k-e-n.

Q How do you spell your first name?

A. H-u-g-o.

By Mr. WARNHOLTZ:

Q. Mr. Troesken, will you kindly speak up loudly so that the Jury can hear you?

A. Yes.

Q. Where are you living at the present time?

A. Bismarck, North Dakota.

Q. Well, in Bismarck, North Dakota, in what particular place are you living in?

A. Fort Lincoln.

Q. Well, is that your home, or what?

A. That is in the Internment Camp.

Q. An Internment Camp; an Alien Internment Camp?

1141 A. Yes, sir.

Q. You are an alien, are you not?

A. Yes, sir.

Q. Mr. Troesken, do you know the defendant Hans Max Haupt?

A. I do.

Q. Can you point him out?

A. The gentleman sitting over there [indicating].

Mr. WARNHOLTZ. If the record will indicate that the witness has pointed out the defendant in the courtroom.

Q. Were you also acquainted with his son, Herbert Haupt?

A. Yes, sir.

Q. When did you first see Herbert Haupt?

A. I believe it was sometime in 1940.

Mr. WARNHOLTZ. Speak a little louder, please.

The WITNESS. I believe it was in 1940.

Q. Where was that?

A. In the Germania Clubhouse.

Q. Do you remember the occasion in the Germania Clubhouse?

A. I am not positive, I believe a dance by some singing organization. The name of the organization I do not know.

Q. When did you first see Hans Max Haupt, as far as you remember?

A. I believe it was in June 1941.

Q. Do you know the exact date?

A. I believe that was the last—it was in June 1942.

Q. In June 1942?

A. Yes, sir.

Q. Where did you meet him?

A. At his home.

Q. What was the occasion of your meeting at his home?

A. It was the day before Herbert left for Mexico.

Q. The day what?

A. Before Herbert left for Mexico.

Q. Do you now wish to correct the statement as to the year it was, in 1941 or 1942?

A. Must have been 1941; my mistake.

Q. Did you at that time also meet Herbert's mother, Erna Haupt?

A. I did.

Q. What happened at that time at that meeting?

A. Why, we just discussed a few things.

Q. Who is "we"?

A. Herbert, myself, and his father and mother. I believe there was someone else present; who he was, I don't know.

Mr. WARNHOLTZ. Speak distinctly, please.

The WITNESS. There was Mr. Haupt, myself, Herbert Haupt, Mrs. Haupt and one other person whom I do not remember. We discussed certain things about South America; things we would have to watch out for in Mexico and South America pertaining to disease, and food and water we would probably eat and drink, and things we should see down there, and the type of work we may be able to find, and, well, it is hard to say.

Q. When you say, "we", whom do you refer to?

A. To all of us. Herbert, Wolfgang Wergin and I.

Q. Herbert, Wolfgang Wergin and you?

A. Yes, sir.

Q. Relative to what were you supposed to see these things or watch them?

A. Well, it was a planned trip for a vacation, and we were to work our way. That was the idea there, we would work our way down there probably and find jobs down there.

Q. Where, down there?

A. Well, Mexico, South America, or Central America.

Q. And you had such a conversation that evening in June 1941, in the home of Hans Haupt?

A. That is right.

Q. In the presence of Herbert Haupt, Hans Haupt and Erna Haupt, and a person now not known to you?

A. Yes, sir.

Q. After that, what happened, where did you stay 1174 that night?

A. I stayed in the house that night.

Q. Is that the first time you had ever been in their house?

A. Yes.

Q. What happened next morning?

A. Well, we got up, ate breakfast, and after breakfast Mr. Haupt said, "Good-bye" to his son and went to work.

Q. By Mr. Haupt, you mean the defendant here?

A. Mr. Max Haupt; yes. Shortly after that Wolfgang Wergin came with his automobile and we took our luggage downstairs and he said, "Good bye" to his mother.

Q. Who is "he"; who is "we"? "We went down"; who is "we"?

A. Herbert and I.

Q. Herbert and you?

A. Yes, sir.

Q. Went downstairs?

A. Yes, sir.

Q. Who was downstairs?

A. I believe his mother was downstairs, that is, she went down with us.

Q. What caused you to go down?

A. To go to the car to leave.

Q. Whose car?

A. Wolfgang Wergin.

Q. And how did you know he was here?

A. He blew his horn, and we looked out the window and saw his automobile running.

1145 Q. And then Herbert and you and Herbert's mother went downstairs?

A. That is right.

Q. What did you take with you, if anything?

A. Now, let me see. We had, I believe, one suitcase. I believe we took some provisions along, bread and some canned fruit and vegetables that we intended to cook on the way down. We were camping out.

Q. You stowed that away in the car?

A. Yes, sir.

Q. Did you take anything else for camping with you along?

A. Oh, yes; blankets.

Q. What?

A. Blankets.

Q. Blankets?

A. Yes, sir.

Q. Who was present at the time when you left; that was in front of the house located where?

A. The location I do not know. I know it was Mr. Hans Haupt's home.

Q. And who was present when the car left?

A. Just Mrs. Haupt.

Q. And who was in the car when the car left?

A. Herbert, Wolfgang and I.

Q. And then what did you do?

A. Well, we drove a few blocks further, and we had

1146 a little tire trouble.

Q. Whose car was it, if you know?

A. Wolfgang Wergin.

Q. What kind of a car was it?

A. I believe a 1934 Chevrolet.

Q. All right. You had tire trouble; then what?

A. Well, I had taken some tools along in case I should find a job.

Q. What is your business?

A. I am an automobile body and fender man.

Q. An automobile what?

A. Body and fender man.

Q. All right. Then what did you do?

A. Well, I found the sparkplugs foul and I had them taken out and cleaned.

Q. Then what?

A. We drove, I believe, to Highway 66, and started on our way.

Q. Now, before you left, the evening before, when you had this conversation, the conversation was had between yourself and Mr. and Mrs. Haupt and Herbert Haupt, was there anything stated

by Mr. and Mrs. Haupt regarding money and hospitals, and coming back, et cetera.

Mr. HURLEY. I object to the leading form of the question.

The COURT. Sustained.

1147 By Mr. WARNHOLTZ:

Q. Do you remember what else was stated in addition to that, what you already told us in that conversation the evening before you left?

A. Well, we were told if we got into any difficulties to write home and send for additional money to be used for any difficulties that came up in regard to hospitalization or sickness, and also to watch out for tropical diseases. I can remember distinctly Mr. Haupt telling us about that.

Q. Is that all?

A. I believe that is just about all. That covers it.

Q. Would it refresh your recollection if I asked you whether or not there was a conversation regarding the sending of money by the parents of Herbert, so that Herbert may come back in case of accident or injury or ill-health?

A. Yes; there was.

Q. What was that?

A. Well, all of us had a certain amount of money on our person, see, each one of us left a certain amount home to be sent to us——

Mr. FINN. Just a moment. I think he is reciting a conversation. I think his answer is not responsive to the question.

The COURT. Well, it is preliminary. What was said?

1148 The WITNESS. As I said, we had a certain amount of money with us. We left a certain amount of money at home, with each one of our parents, to be sent us in case of any accident or sickness, et cetera, in case of this, so that we could return.

Mr. FINN. I object to that and ask that the answer be stricken on the same ground.

The COURT. Well, let it stand.

Mr. WARNHOLTZ. Now, when you come to Highway—what number was it?

The COURT. 66.

Mr. WARNHOLTZ. 66; what did you do then?

A. We drove, I think, I believe we stopped just on this side of St. Louis.

Mr. WARNHOLTZ. Yes.

The WITNESS. We camped for the night and slept in the automobile, and cooked our own meals.

Q. And the next day?

A. We ate breakfast in the restaurant and drove as far as—some place, just this side of Miami, Oklahoma.

Q. Yes; from that?

A. From there on, I believe, we went to Dallas, Texas, and from Dallas, Texas, we went to San Antonio, and from San Antonio to Lorado, Texas.

Q. And then what did you do?

1149 A. Well, we tried to enjoy ourselves as much as we could.

Q. What did you do?

A. We discussed the friends we were leaving behind—mainly, our girl friends. I would say our folks, too. We also discussed things we would likely see on the way down to the different places that we may visit, and the trouble, of course, we may be able to find, and, oh, it is hard to recall everything.

Q. What, if any, conversation did you have concerning what would be your destination?

Mr. FINN. I object to that, if your Honor please.

A. We had no destination in mind.

1150 By Mr. WARNHOLTZ:

Q. Now, when you got to Laredo, Texas——

Mr. WARNHOLTZ. Strike that out, will you please?

Q. What happened there?

A. Well, we stopped at a restaurant and had dinner and went—went over to a bridge which is a stopping place for the border patrol. In other words you have to stop there to prove—show credentials to cross—we were questioned there.

Q. A bridge over what river?

A. The name of the bridge I am not acquainted with.

Q. What river?

A. Rio Grande.

Q. That was the border, is that right?

A. Yes.

Q. Between Mexico and United States?

A. Yes, sir.

Q. And what happened at that bridge?

A. We were questioned whether or not we were American citizens, and if so, to prove credentials, to show it was, and Herbert and Wolfgang were able to do it. Being an alien, not able to cross, I was not able to show credentials. They were citizens and I was not a citizen. They took me to the station. I filled
1151 out some kind of a paper. I do not know what it was, and they told me I could not go across.

I said, "Good-bye" to the boys and they said, "We will take you to the hotel"; so they took me over to the hotel and from the hotel went down to the river with them again—the Rio Grande—and I watched them cross.

Q. Did they drive across the bridge with their automobile?

A. Yes, sir; they did.

Q. Did you see any of them swim the Rio Grande to get over there?

A. No, sir; there was no one done any swimming.

Q. No automobile was dumped into the Rio Grande, either?

A. No, sir.

Q. As far as Herbert Haupt and Wolfgang Wergin were concerned, they were permitted to cross the bridge by the authorities?

A. They were.

Q. Was any discussion had, or had any discussion been had as to what you were to do upon arriving in Mexico?

Mr. HURLEY. I object to that, if the Court please. He answered it once or twice before.

1152 The COURT. Well, let him answer it again.

A. Will you repeat that question?

By Mr. WARNHOLTZ:

Q. Was there any discussion had between you and the other two boys as to what you would do when you arrived in Mexico?

A. Well, we had some intention of visiting Mexico City where I had occasion to get in touch with the German consul, to see if I would need any papers to work as a seaman either on a fruit boat or an oil boat, so I could continue my trip into South America. Whether this was my idea or somebody else's idea I am not sure, but I believe it was mine.

Q. And when Wolfgang Wergin and Herbert Haupt drove across the Rio Grande that was the last time you have ever seen them, is that right?

A. Yes, sir.

Mr. WARNHOLTZ. That is all.

Cross-examination by Mr. FINN:

Q. Mr. Troestkin, you said you believed it was your idea to contact the German Consul——

A. Yes, sir.

Q. Wasn't that also Herbert Haupt's idea to contact the German Consul?

1153 A. I really would not know. After all I was an alien and Herbert was a citizen. I had no idea why he should see the consul.

Q. Do you recollect testifying before the grand jury?

A. I do.

Q. In the year 1942?

A. Yes, sir.

Q. I believe it was a Thursday, August 27th, that day, do you recollect whether these questions were asked you and whether you made these answers, in speaking of Herbert Haupt:

"Q. How much money did you want to raise?

"A: He said I would have to have at least $100."

Do you recollect Herbert Haupt——

Mr. WARNHOLTZ. Just a moment. I object to reading from the grand jury proceedings at this time. The point is one that is not material in evidence.

The COURT. I do not know. He is laying the ground for impeachment. I guess he has a right to. Overruled.

Mr. FINN. It is a series of questions, your Honor, and I want to identify them.

1154 Q. "Q. Was he sort of organizing this expedition?

"A. I would not say he was organizing, because he had not invited anybody.

"Q. Did he tell you he was going away at that time?

"A. Yes. He told me Wolfgang was going along.

"Q. What did he tell you as to their plans—where they were going?

"A. Where?

"Q. Where they were going?

"A. He had planned to go down to Mexico, across the border, and maybe he was going to contact the German consul.

"Q. He was going to contact the German consul?

"A. Yes.

"Q. Where?

"A. In Mexico City, to see if he needed any papers to go further."

Do you recollect this questions being asked you?

A. I did, sir.

Q. And making those answers at that time?

A. Yes, sir; but I believe I said I was doubtful as to that.

1155 Q. In doubt?

A. Yes, in doubt.

Q. Did you not say at that time that Herbert Haupt planned on contacting the German consul to see if he could get papers to go any further?

A. I might have made a statement to that effect; yes.

Mr. FINN. All right. That is all.

Mr. WARNHOLTZ. No further examination.

The COURT. Step down.

(Witness excused.)

ERNA HAUPT, called as a witness on behalf of the Defendant, having been first duly sworn, testified as follows:

Direct examination by Mr. WARNHOLTZ:

Q. Will you kindly state your name, Mrs. Haupt?

A. Erna Haupt.

Q. You are married to Hans Max Haupt?

A. Yes, sir.
Q. The defendant?
A. Yes, sir; I am.
Q. Do you see him now in the courtroom?
A. Yes.
Q. Speak a little louder if you will, kindly. Are you familiar with the signature of your husband?
1156 A. Yes, I am.
Q. You have often seen him sign his name?
A. Yes, I did.
Q. I will show you now Defendant's Exhibit 6, so marked for identification, and showing you the reverse side and the signature of "Hans Haupt," I will ask you if that is your husband's signature?
A. Yes, it is.
Q. Mrs. Haupt, in what month of the year were you born?
A. The 29th of June 1899.
Q. In June, on the 29th day?
A. Yes.
Q. State if you remember on what day of the week the 29th of June fell in the year 1942?
A. On a Monday.
Q. Were there any children born as the result of your marriage with Hans Haupt?
A. Yes; one son.
Q. What is that?
A. Yes; one son.
Q. What is his name?
A. Herbert.
Q. If he were now living what would be his age?
A. 24.
Q. When and where did you last see him?
A. Washington, D. C., at the trial.
1157 Q. When was that, about?
A. The 23rd of July.
Q. Of what year?
A. 1943.
Q. Did you say 1943? It was 1942, was it not?
A. Yes; I want to correct it—1942.
Q. You saw him there at the military trial?
A. Yes, sir.
Q. Did you testify?
A. Yes, I did.
Q. Where have you been living since that time?
A. At the County Jail.

Q. Do you know of your own knowledge whether your son, Herbert Haupt, is now living or dead?

A. I believe he is not living any more.

Q. State what, if any, official knowledge you have that he is not living any more?

A. My husband gave me once a letter which was addressed to him at the County Jail, and it was written by the chaplain that he saw my son to the last.

Mr. WARNHOLTZ. Will you mark this "Defendant's Exhibit 13" for identification.

(Said document was thereupon marked "Defendant's Exhibit 13" for identification.)

Q. Is this the letter you now spoke about?

A. Yes, it is.

1158 Q. Did your husband tell you where he got the letter from?

A. He told me it was mailed to him.

Q. Had you at any other time tried to obtain any information as to official information, as to whether or not your son is dead or alive?

Mr. FINN. I will object to that, your Honor.

The COURT. Sustained.

Mr. WARNHOLTZ. I offer this letter in evidence, if the Court please.

Mr. FINN. We will object to the letter, your Honor.

Mr. WARNHOLTZ. On what ground? I have to prove the death of Herbert Haupt. That is the purpose.

Mr. FINN. We will agree to the death of Herbert Haupt.

Mr. WARNHOLTZ. I do not have to take your admission or agreement any more than you have to take my admission.

Mr. FINN. But it goes into other matters besides the question of the death of the son.

Mr. WARNHOLTZ. It has a bearing on the matter of hearsay evidence, and so forth.

The COURT. You are offering this to what?

Mr. WARNHOLTZ. For the purpose of proving the death of Herbert Haupt.

Mr. FINN. Well, it is obvious——

1159 The COURT. What materiality would it be?

Mr. WARNHOLTZ. The materiality is this: That it makes much evidence inadmissible that has been introduced heretofore, whether or not he is living or dead.

The COURT. It is not the best evidence. Objection sustained. If the question is material that is not the best evidence. Objection sustained.

Mr. WARNHOLTZ. May I state to the Court that I have three separate times tried to obtain death certificates, but the military authorities refused them and they will allow no information as to the death of Herbert Haupt.

Mr. FINN. I will object to the remarks of counsel in the presence of the jury.

The COURT. Sustained.

Mr. FINN. And I ask the jury be instructed to disregard it. We are willing to stipulate to the entire fact, that Herbert Haupt died on such and such a day—whichever date he says, Herbert Haupt died, and that is all that is necessary. This is entirely prejudicial.

Mr. WARNHOLTZ. You may cross-examine.

Mr. FINN. No cross-examination.

Mr. WARNHOLTZ. There was one more question, if the
1160 Court please.

Q. What, if any steps have you taken, Mrs. Haupt, to ascertain officially the facts regarding the life or death of your son?

Mr. FINN. Objection, your Honor.

The COURT. Sustained.

Mr. WARNHOLTZ. That is all, your Honor.

The COURT. You may step down.

(Witness excused.)

Mr. WARNHOLTZ. At this time, if the Court please, I wish to offer in evidence a subpoena card served on Mr. Eggert, heretofore marked "Defendant's Exhibit 3" for identification.

The COURT. It may be received.

(Whereupon said document, marked Defendant's Exhibit 3," was received in evidence as Defendant's Exhibit 3 and is in words and figures as follows, to wit:)

1161 Mr. WARNHOLTZ. A like card served on Gustav Zermer, heretofore marked "Defendant's Exhibit 1" for identification.

The COURT. It may be received.

(Whereupon said document marked "Defendant's Exhibit 1." was received in evidence as Defendant's Exhibit 4 and is in words and figures as follows, to wit:)

1162 Mr. WARNHOLTZ. I ask that these identification marks be stricken and they stand as to the same exhibit numbers.

I offer a sketch made by Gustav Zermer as to the diagram of the home or residence of Haupt, heretofore identified as Exhibit 2 of the defendant, showing where Zermer marked with a "K" by Zermer, and showing where he was seated at the time.

The COURT. It may be received.

(Whereupon said document, marked "Defendant's Exhibit 2."

was received in evidence as Defendant's Exhibit 2 and is in words and figures as follows, to wit:)

1163 Mr. WARNHOLTZ. I ask that the identification marks be stricken out and then I offer in evidence as Defendant's Exhibit 6 for identification, being the check——

The COURT. It may be received.

(Whereupon said document, marked "Defendant's Exhibit 6," was received in evidence as Defendant's Exhibit 6 and is in words and figures as follows, to wit:)

1164 Mr. WARNHOLTZ. I ask that the identification numbers on Exhibits 8, 9, and 10 be taken off and that they be received as——

The COURT. They may be received.

Mr. WARNHOLTZ. Of like numbers.

(Whereupon said documents marked "Defendant's Exhibits 8, 9, and 10," were received in evidence as "Defendant's Exhibits 8, 9, and 10," and are in words and figures as follows, to wit:)

1165 Mr. BERTRAM. If the Court please, I would like to offer in evidence the Illinois statutes State Bar Association Edition, 1943 Edition, Section 4, and Division 2, Chapter 38 of the Criminal Code being paragraph 584 in the statutes. I have the bound volume here of the statute.

Mr. FINN. If there is going to be a discussion, your Honor, on the statute, I think it ought to be out of the presence of the jury.

The COURT. Step into chambers, gentlemen.

(And thereupon court and counsel retired to chambers whereupon the following proceedings were had in the jury's absence.)

The COURT. Is that the statute which you embodied in the instruction?

Mr. BERTRAM. That is correct, your Honor.

The COURT. I have cudgeled my brain about it, the relevancy of that. What is the relevancy?

Mr. BERTRAM. The relevancy is that it is the law of the State of Illinois that the father of a son who has committed a crime, any crime, even murder shall not be held as an accessory after the fact upon any crime for concealing, harboring, maintaining or

1166 assisting such son. That is the law of the State of Illinois.

The COURT. Any objection?

Mr. FINN. Yes; your Honor.

The COURT. I cannot see any relevancy of it at all. Objection sustained.

Have you got any other questions we want to discuss in here?

Mr. BERTRAM. Of course, we will have our motions at the conclusion of all the evidence.

Mr. WARNHOLTZ. I will get my files, and we can dispose of that. It will only take a few minutes.

Mr. Woll. Are you finished? Have you closed your case?

The Court. I was only suggesting. I did not want to walk out and then walk in again. If we have any other questions that we might take up here?

Mr. Bertram. We want to renew the written motions which we made at the close of the government's cases: motion for a directed verdict and four separate motions to exclude evidence. We have not written those over. We have not re-written the motions to exclude the evidence, but I wanted to have those so the record will show.

The Court. We will take care of that.

1167 Mr. Warnholtz. On the second day of June, if it please the Court, the defendant offered four motions.

The Court. Wait a minute now. Have you all of your evidence in? Is all of your evidence in?

Mr. Warnholtz. Yes; unless we have got something more documentary or anything of that kind. I do not believe so.

Mr. Bertram. Have you the document file?

Mr. Warnholtz. No; I have not got that here.

The Court. I will ask you gentlemen, assuming that the Defendant rests; he has not rested, but just assume that he did rest, will you gentlemen have any further evidence?

Mr. Woll. I would like to talk to Mr. Hurley and Mr. Finn about it. If we have it would only be, at the most only five minutes.

The Court. Let us step out.

Mr. Woll. I think I would have to look at the record. If we did have it would be only five or ten minutes.

The Court. You are right up there now. We will go back and finish this case. Let the defendant rest.

(And thereupon the following proceedings were had in open court in the presence and hearing of the jury:)

1168 Mr. Warnholtz. The defense rests, if the Court please.

Here the defendant rested his case.

Mr. Woll. Your Honor, may we have just a few minutes to look at the record, not more than five minutes.

The Court. Take a five minute recess, ladies and gentlemen.

(A recess was here taken.)

The Court. Are you ready for the jury, gentlemen?

Mr. Woll. Yes, sir.

(The following proceedings were had in the presence and hearing of the jury.)

The Court. The defense has rested. Does the government have anything further?

Mr. Woll. No rebuttal. Nothing further. The Government rests.

The COURT. Both sides rest?

Mr. WOLL. Yes.

Mr. WARNHOLTZ. Yes, your Honor.

(Which was all of the evidence offered or received in the trial of said case as hereinbefore set forth.)

1169 The COURT. You may be excused, ladies and gentlemen until ten o'clock tomorrow morning. Do not discuss the case with anyone or permit anyone to discuss it with you, and do not discuss it amongst yourselves, until it is finally submitted to you for decision. Report here at ten o'clock tomorrow.

(And thereupon the jury withdrew and the following proceedings were had in the absence of the jury.)

Mr. WOLL. If the Court please, I would like to call something to the Court's attention which I had observed in the courtroom. I know the gentleman involved did not mean anything by it, but a letter was attempted to be introduced, but it was not introduced, and Mr. Swett, I noticed is looking at the letter. I do not like to have that letter published.

The COURT. I do sincerely request that you do not publish that letter until after the jury has concluded with this case. Mr. Counsel, you should not have given that letter out.

Mr. WARNHOLTZ. It was published two years ago.

The COURT. What?

Mr. WARNHOLTZ. It was published two years ago. They have the letter.

The COURT. It should not have been done now.

1170 Mr. WOLL. It has been denied admission here.

Mr. WARNHOLTZ. I am sorry I gave it out. It appears, however, they have, I know, a copy in their files.

Mr. Woll, at this time, and if the Court please I should like to renew four motions which were made by the defense on June 2nd and which at that time were overruled. They dealt with the motion to strike or to exclude certain evidence, namely, testimony of witnesses relating to statements alleged to have been made by the defendant prior to December 7, 1941; and also relating to such statements which have been made by the defendant prior to June 17, 1942.

The COURT. It was five motions. There were five motions.

Mr. WARNHOLTZ. Five.

Mr. BERTRAM. One was on behalf of the defendant to direct a verdict, and four were to exclude evidence, making five altogether.

Mr. WARNHOLTZ. As to those four motions I believe they can be identified for the record, and I wish to renew them at this time; and I want to state that I have not re-written them, but I believe the reference to those motions will be sufficient.

1171 The COURT. Very well, they may be regarded as having been presented again at the close of all the evidence and each one of them will be overruled and denied and you may have an exception to each order overruling each motion.

(The motions so offered on behalf of the Defendant at the close of the evidence offered on behalf of the Government, and by permission of Court shown of record as being renewed at the close of all the evidence, and denied, are in the following form, to wit:)

1172 (Motions on behalf of Hans Max Haupt, defendant, omitted. Printed side page. 55 ante.

1175 (Motions to strike and exclude testimony, omitted. Printed side page. 59, 61, 63, 65 ante.)

1182 Mr. BERTRAM. At this time, if the Court please, I would like to present a motion to your Honor at the close of all the evidence in the case to direct the jury to find the defendant not guilty of the charges contained in the above entitled case.

And the defendant, Hans Max Haupt, makes the following separate and additional motions with respect to the specific overt acts charged in the said indictment, and then without reading the entire motion, we ask that each of the several overt acts, numbers 1 to 29, both inclusive, that upon each of those the Court instruct the jury to find the defendant not guilty, upon each of those numbered overt acts, and in support of all of said motions the defendant shows ten grounds, in support of those motions. I shall read them at this time, your Honor——

The COURT. You may file that motion and it will be regarded as having been read.

(The motion so made by counsel on behalf of the defendant, made a part of the record as hereinbefore set forth is in the following form, to wit:)

1183 (Motions on behalf of Hans Max Haupt, defendant, omitted. Printed side page. 68 ante.)

1186 Mr. BERTRAM. We also present to the Court, and we have a form of directed verdict, made at the close of all of the evidence in the case, which recites that the Court instructs the jury to find the defendant not guilty, and we ask the Court to mark his ruling upon the same.

(The motion so made in writing on behalf of the Defendant is in the following form: "The Court instructs the jury to find the Defendant not guilty.")

We would like to argue this motion for a directed verdict, and also upon the overt acts.

The COURT. We will hear you. Suppose you come into chambers and do that?

(Thereupon the following additional proceedings were had in chambers.)

Mr. BERTRAM. Do you want us to proceed, your Honor?

The COURT. Is it your wish that we wait for Mr. Finn? We better wait for Mr. Finn.

Mr. WOLL. You may proceed. It will not be necessary to wait. He will be right in.

The COURT. Shall we proceed?

Mr. WOLL. Yes; if the Court please.

1187 The COURT. Proceed.

Mr. BERTRAM. If the Court please, upon the motion to find the defendant not guilty under the indictment, I would like to offer the decision in the case of United States vs. Helmuth Leinert, who was a defendant in a somewhat similar position, with charges that were brought against him upon alleged overt acts resulting from contact with some members of the same eight saboteurs and at the close of all the evidence in the case the court rendered this decision:

"The motion to direct a verdict must be granted. All of the law of treason is well settled and is cited in United States vs. Robinson, 250 Fed. 685. That decision adopts as the definition of an overt act, required by the Constitution, such an act as 'manifests a criminal intention and tends towards the accomplishment of the criminal object, one by which the purpose is manifested and the main object thus intended to be fulfilled'."

The COURT. I do not think that is the law. Who is that Judge?

Mr. WOLL. It was a District Court Judge in New York.

1188 The COURT. Clancy?

Mr. WOLL. I do not recall the name of the judge.

Mr. FINN. It was disposed of in the Kramer case in the 2nd Court of Appeals, in New York.

The COURT. I do not think that is the law.

Mr. BERTRAM. It enables me to state the theory upon the——

The COURT. Judge Clancy in that case directed a verdict for the defendant. I believe in error. That is not the law.

Mr. BERTRAM. May I proceed further on that point, your Honor?

The COURT. Well, I just see no use in discussing that. I do not think that is the law.

Mr. BERTRAM. Well, we contend the overt act itself must manifest——

The COURT. I understand.

Mr. BERTRAM. You understand my point?

The COURT. In regard to overt acts, if it be required that, if I were to see it, or if anybody else were to see it, we must be able

to state "that is treason", that is not the law. That idea of what an overt act may be is just silly.

1189 Suppose the three of us around this table or four of us, enter into a conspiracy to overthrow the government of the United States, and as a part of that conspiracy we say we will assassinate the head of government, and that one of us is designated as leader, and we all agree to it; that we all attend a certain meeting where the head of the government will be and that the signal for assassination or shooting, shall be the taking of my handkerchief out of my pocket and blowing my nose.

Suppose we assemble there, suppose I did that thing, and suppose just as I did that everyone is arrested; have I committed or has there been an overt act?

Mr. BERTRAM. I do not think that we have any signal point involved here. It is the law.

The COURT. But the taking of a handkerchief out of my pocket is an innocent act and nobody would know the thing itself—that is, innocent enough, unless some person knew of our illegal conspiracy.

Mr. BERTRAM. It is the law, well settled, your Honor, that conspiracy, no matter how outrageous, is not treason.

The COURT. I know that.

1190 Mr. BERTRAM. But we are talking about treason. Now I think on the fact charging treason, if the overt act was the taking of my handkerchief out of my pocket——

The COURT. An innocent act in itself.

Mr. BERTRAM. You would have to allege in the indictment the taking of the handkerchief was an act of signalling and so forth, that it was the act that would have set the thing in motion.

The COURT. I do not think so.

Mr. BERTRAM. No? You would have no analogy here of that at all.

The COURT. I do not believe so. I just think that Judge Clancy went off the deep end. I do not think that is the law.

Mr. BERTRAM. There is also the case of United States vs. Robinson.

The COURT. I believe in the statement of Judge Learned Hand, in the case was obiter dicta. Judge Clark in the same court so declared where the point was directly made.

Mr. BERTRAM. You will also find some English decisions, your Honor, where the same ruling was made as to an overt act.

1191 The COURT. I was reading the cases over Sunday. I read them over the Sunday before. I read them over the Sunday before we started the case and I read them some months before and I have read them again, yesterday. I am just against you on that point.

Mr. BERTRAM. All right, if your Honor has made up his mind on that point I will proceed with the further motions which I have directed to the particular overt act, the individual overt act, and I may say——

The COURT. Does the government contend that all these overt acts should go to the jury?

Mr. FINN. No. It is our position, your Honor, that we should submit certain of them.

The COURT. Which ones do you say should be submitted?

Mr. WOLL. We have them marked, if your Honor please.

The COURT. No use talking about the ones which you say should not be submitted. That is the point I am making.

Mr. WOLL. We do not, of course, mean the jury should not consider them.

The COURT. They are not submitted as overt acts. That is what I am talking about now.

Mr. FINN. This is the method that was followed in the Kramer case. That is the method the Court followed in the Krainer case.

1192 The COURT. The submission of all?

Mr. FINN. They submitted, I believe, three out of ten overt acts, leaving the rest of them in on the question of intent.

Mr. BERTRAM. In submitting to the jury, you mean evidence is not excluded with relation to those acts. As to the overt acts, the jury will be informed only as to those which the Court will direct to go to the jury. We have those.

The COURT. One to nine are withdrawn.

Mr. BERTRAM. One?

The COURT. One to nine, inclusive?

Mr. BERTRAM. One to nine, inclusive?

The COURT. Yes.

Mr. BERTRAM. Withdrawn?

The COURT. I am telling you the suggestion of the government.

Mr. BERTRAM. Yes; we understand it.

Mr. FINN. The overt acts upon the basis of submission can be made.

The COURT. Ten up to seventeen, inclusive, the government contends should be submitted. Eighteen and nineteen should be withdrawn. Twenty to twenty-three——

Mr. BERTRAM. Twenty to twenty-four?

1193 The COURT. Twenty-two, twenty-three, twenty to twenty-three; they should be submitted. Twenty-four to twenty-nine. They should be withdrawn.

Mr. WARNHOLTZ. Twenty-four to twenty-nine.

The COURT. Those they say—and twelve should be submitted, and I think seventeen should be withdrawn.

Mr. HURLEY. Twenty-nine altogether.

The COURT. Yes.

Mr. BERTRAM. Seventeen should be withdrawn?

Mr. WARNHOLTZ. Twenty to twenty-three, ten to seventeen, twenty to twenty-three, both inclusive?

The COURT. One to nine withdrawn; eighteen, nineteen, twenty, twenty-four to twenty-nine, inclusive, are withdrawn; ten to seventeen, inclusive, and twenty to twenty-three, both inclusive, submitted.

As a matter of fact, we get around to the proposition that the overt act does not and is not required to be an act which in itself can be said to be treasonable—I do not see much use in—maybe there is some, maybe there is some. Because they have a right to the submission, there is no error in submitting them.

Mr. WOLL. They should all be submitted to the jury as overt acts.

1194 The COURT. I am speaking of submitting them in the sense that they are overt acts.

Mr. FINN. The overt act to sustain the treason has to have two witnesses.

The COURT. Well, what do you say?

Mr. BERTRAM. Number 10 is one to be submitted. Number 10, if the Court please, says that Han Max Haupt on June 22 accompanied Herbert Haupt.

The COURT. Clearly they have got two witnesses there.

Mr. BERTRAM. I do not think the act of accompanying, your Honor, is such an act that could be treason.

The COURT. Well, I am against you on that.

Mr. BERTRAM. And number 11?

Mr. WARNHOLTZ. That is the same.

Mr. BERTRAM. Seems to be the same.

The COURT. The same. I think that is proper.

Mr. BERTRAM. You say 12 has been withdrawn; is that correct?

The COURT. No.

Mr. BERTRAM. 12? I do not believe there are any eyewitnesses to number 12, your Honor.

The COURT. What do you say about 12? They say there are no eyewitnesses?

Mr. FINN. That is on the 22nd day, your Honor?

The COURT. Yes.

1195 Mr. WARNHOLTZ. That is Monday, is it not?

Mr. FINN. Yes; the evidence shows that they observed Herbert Haupt entering the premises at 2234 North Fremont Street at 12:25 P. M. Handley and Dixon testified to that. Handley and Dixon also testified that at 1:45 P. M. Herbert Haupt left the premises at 2234 North Fremont Street and pro-

reeded south on Webster Avenue, got in a taxicab. It shows that at 5:00 P. M. Handley and Dixon saw Herbert enter the premises at 2234 North Fremont Street. At 7:30 P. M. Herbert, Hans—that is Herbert and Hans Haupt left the premises of 2234 North Fremont Street and entered the Plymouth sedan. They were then followed around to the Grunaus.

The COURT. I think that is proper to be submitted.

Mr. BERTRAM. It is our contention that circumstantial evidence, no matter how strong it may be, even though it may be beyond a reasonable doubt, cannot satisfy the constitutional requirement of two witnesses to an overt act. The testimony of the two agents was to the effect they saw him entering the entrance door on the first floor; and there is some testimony—I do not know if it is on that particular event—as to the lights going on and lights going off. The two agents, I think, contradicted themselves about
1396 whether the lights were on before Herbert entered or not, purely circumstantial evidence.

The COURT. Well the word is "sheltered."

Mr. BERTRAM. The evidence only goes so far as to the fact that he entered the entrance door and then the lights went off.

Mr. HURLEY. Also evidence that he did not go into any other apartment in the building, in that particular building; that he went in the front entrance and it was the only one there.

The COURT. I think that is sufficient. What about twenty-three?

Mr. BERTRAM. I have made the same contention that is made.

The COURT. Twenty-three. That is number 13. June 23rd.

Mr. FINN. In that regard, your Honor, the evidence shows that Lynch, Fletcher, Robe, and Dixon saw Herbert Haupt leave the premises of 2234 North Fremont Street with Erna Haupt and go to the "L" station, and so forth, and that at 5:15 Agents Lynch, Meech, and Dixon saw Herbert enter 2234 North Fremont Street.

The COURT. That is all.

Mr. BERTRAM. That is 13?

1397 Mr. FINN. 13: We have two people who were in the Warner Motor Sales Company and the agents followed them to the Warner Motor Sales Company. Vinson and Farrell testified Hans and Herbert were there.

The COURT. 14. Signed a financial statement and so on.

Mr. BERTRAM. 14 is signing a financial statement. I do not see how that could be an overt act, your Honor.

The COURT. Yes, yes; I think so: 15, again accompanied Herbert Haupt and made arrangements; these employees of the agency saw them there.

Mr. FINN. Vinson and Farrell.

The COURT. 16.

Mr. BERTRAM. Did they both see them on that second trip?

The COURT. Yes, sir. How about 16, made a further payment in cash.

Mr. FINN. Both testified.

Mr. WOLL. Both Mr. Farrell and Mr. Vinson testified.

Mr. BERTRAM. The manager was not there and did not know whether or not——

Mr. WARNHOLTZ. At one time the manager was not present and did not see any of the transaction at all. He had no knowl-
1198 edge as to the fact, he did not see what took place.

Mr. HURLEY. He got the money.

Mr. WARNHOLTZ. I remember distinctly, from the testimony, generally it is I should say—which one it is, I do not know.

The COURT. The second time he said he did not talk to them. That is what he said.

Mr. HURLEY. But he did get the money.

The COURT. But he did get the money.

Mr. HURLEY. $405.00.

The COURT. He said that.

Mr. BERTRAM. He testified from records, you will recall.

Mr. HURLEY. No; he did not testify from records.

The COURT. How about 17?

Mr. BERTRAM. Withdrawn, 17?

Mr. HURLEY. It is not withdrawn.

Mr WARNHOLTZ. It is not withdrawn. It is one of those submitted.

The COURT. "Harbored and sheltered" Herbert Haupt.

Mr. BERTRAM. No eyewitness, if the Court please.

Mr. HURLEY. That is on the 23rd.

Mr. FINN. Zermer and Melind in the house. In addition,
1199 at 12:20 p. m., Herbert Haupt and Erna Haupt left 2234 North Fremont Street, as shown by Lynch, Fletcher, and Meech, as well as Dixon, and at 5:05 Lynch, Meech, and Dixon saw Heroert Haupt reenter the house. 6:00 p. m., Herbert Haupt and Erna and Hans Haupt left 2234 North Fremont Street, as witnessed by Snyder and Meech in the car; and they entered the restaurant and so forth. They followed them around in the car and Herbert and Hans went in the car to the Warner Motor Sales.

At 7:55 p. m. Hans entered the house and after that they left the tavern and entered the house at 2234 North Fremont Street. There were Lynch, Dixon, Snyder, and Meech. Herbert came out and in ten minutes—ten fifteen with Gerda Melind, as witnessed by Meech, Snyder, Dixon, Lynch, and Louis, and also Zermer and Melind who were in the house.

The COURT. I think 17 may be submitted.

Mr. BERTRAM. 18 is marked withdrawn.

The COURT. It is withdrawn. 20 is the next.

Mr. BERTRAM. I have that marked no eyewitness on June 24.

The COURT. What do you say about 20?

Mr. FINN. At 12:30 a. m. Herbert entered 2234 North Fremont Street as witnessed by Meech, Snyder, Dixon, Lynch, and
1200 Louis. At 7:05 a. m. Herbert came out of the premises at 2234 North Fremont Street as witnessed by Meech and Lynch. At 1:00 p. m. Herbert came from the premises at 2234 again and got in a green Checker cab and left. At 5:30 p. m. Mr. Berg saw him reenter the premises at 2234 North Fremont Street. At 6:00 p. m. Hans and Herbert came out of 2234 North Fremont Street and got in the Plymouth and drove to the Warner Motor Sales as witnessed by Robe and Berg. At 6:30 p. m. came out of there and Herbert Haupt entered 2234 North Fremont Street as testified by Robe and Berg, and some time later, at 6:45 p. m., Herbert Haupt came out of 2234 Fremont Street, crossed to go to a grocery, and so forth and then at the Vine Gardens and the Blue Danube and so forth, the same two witnesses, Robe and Berg. 9:15 p. m. he came out, came back but did not reenter. Then went around, drove that night in the Pontiac coupe, and then at 12:45 the same two witnesses saw him enter the premises at 2234 North Fremont Street at 12:55 a. m.

The COURT. June 25, which is number 21.

Mr. BERTRAM. We contend that that evidence is all circumstantial and is not eyewitness to the overt act. It is all the same,
1201 where they go through the 25th, the day of the 25th which is number 21, no eyewitness to the overt act alleged.

The COURT. Well, I am against you on that.

Mr. FINN. At 12:15, or at 12:25 a. m., Herbert entered the premises at 2234 North Fremont Street as witnessed by Robe and Berg. At 7:10 a. m. Hans Haupt came out of the premises witnessed by Carl Eggert—came out of the premises, and also at 7:15 a. m., a few minutes afterwards, Herbert came out of the premises at 2234 North Fremont Street. Witnessed by Connerty, who was planted across the street. Also witnessed by Mr. Eggert, who was standing in front of the house at the time.

Then Herbert—at about 4:20, Herbert arrived and entered the premises at 2234 North Fremont Street, as witnessed by Robe, Lynch, Meech, and Fletcher and Connerty in the plant across the street. They saw Herbert Haupt come out of the premises at 2234 North Fremont Street. That is Connerty in that flat across the street, and it was also testified that 11:30 p. m. Herbert entered the premises at 2234 North Fremont Street, by Connerty and Axtell and Louis in the plant across the street, that is the 25th.

The COURT. Well, I think that may be submitted.

1202 Mr. BERTRAM. June 26th we say there were no eyewitnesses—that the only evidence that they have was circumstantial evidence.

Mr. FINN. 9:00 o'clock in the morning Herbert came out of 2234 North Fermont, entered the Pontiac, Meech and Connerty in the plant, also Louis in the plant. At 4:55 P. M. Hans returned to 2234 North Fremont Street. At 6:00 P. M. Herbert returned and entered the premises at 2234 North Fremont Street. Connerty in the plant described it as well as Meech.

At 7:15 P. M. Hans Haupt left 2234 North Fremont Street, witnessed by Connerty.

8:07 P. M. Herbert and Erna came out of 2234 North Fremont Street, witnessed by Connerty in the plant across the street, and returned home at 1:50 A. M. the following morning. That would be the 27th. Witnessed by Louis, Meech, and Robe.

On that same evening he returned to the house at 11:00 P. M; and at 1:50 P. M. (on the 27th, which was the morning following, he was seen to enter the premises at 2234 North Fremont Street. Witnessed by Robe, Meech, Fletcher, and Louis. Those were the same ones that had seen him on the same night at an earlier time.

1203 Mr. BERTRAM. 23 is the last one.

The COURT. Yes.

Mr. FINN. 9:05 that morning——

Mr. BERTRAM. I make the same contention with respect to 23.

The COURT. I think it may be submitted. 10 to 17, both inclusive; 20 to 23, both inclusive—those will be considered as overt acts which may or can be proven by the testimony of two witnesses if there is evidence——

Mr. BERTRAM. May I have those?

The COURT. 10 to 17, both inclusive; 20 to 23, both inclusive. Now, I will deny this motion.

Mr. BERTRAM. Exceptions follow, as the Court indicated?

The COURT. I will deny this motion as made, but I will withdraw from the jury as overt acts numbers 1 to 9, both inclusive, and those numbered 18 and 19, and those numbered 24 to 29, both inclusive—I will do that in my instructions.

Mr. BERTRAM. If the Court please, I have submitted our instructions—additional instructions. This first group was based upon the grounds that we made at the conclusion of the government's case and again at the close of all the evidence, to exclude the evidence requested in those motions and the other

1204 instructions.

The COURT. These will be denied.

Mr. BERTRAM. Do you wish to hear from us on any of those four motions?

The COURT. I think not.

Mr. BERTRAM. I can state our reasons.

The COURT. You have stated them sufficiently. I understand your point.

Mr. BERTRAM. Now, our additional instructions I would like to give your Honor.

The COURT. Yes.

Mr. BERTRAM. The first one is based on the Illinois statute. The others are on the other propositions.

The COURT. This first one, that is based on the statute, I will have to deny:

"Under the law of the United States, even if a person in general discussion expresses verbal or adverse opinion as to the members of any race, color or creed, or regarding any nationality——"

Now, I have been working on these instructions with the assistance of my Secretary, and I think I have a set of instructions in course of preparation.

1295 I am going to give each of you this set of instructions in its present state and I shall continue to work upon them, but I would like to have you look at them. I have prepared these instructions, not with the idea of aiding one side or the other, but with the idea of instructing the jury fairly and impartially, and with the idea of helping them. Whether I shall succeed or not I do not know, but I want to do the best I can.

I would like to receive your criticisms, if there are any errors in the instructions I would be glad to have you call my attention to them, and I will give you an opportunity to do that before the instructions are finally put in shape.

I wish you would look these over tonight, look them over tonight and be prepared to tell me about them before tomorrow is over.

Mr. FINN. Your Honor, I have an index to the instructions which may facilitate the use of them. Also another instruction which I will substitute for the instruction that is submitted, the instruction on page 10, and I have given a copy of it to the defendant.

Mr. BERTRAM. I have not had any yet; any copy of them as yet.

1296 The COURT. How does this differ from the other? I will look it over.

Mr. WOLL. It attempts to make that one more embracive.

The COURT. Tomorrow. I take it the arguments will start just as soon as we can get to them after ten o'clock. The government has indicated that he wants to divide its final argument. Is there any objection to that? From a legal standpoint I cannot see that the defendant can be prejudiced by that.

I am going to advise you I want you to be sure that you make a fair opening and that your final argument be strictly a final argument, but it is up to you to carry the burden if you split your final argument. That is the problem.

Mr. WARNHOLTZ. It seems to be somewhat difficult to make an argument until we know something about what the instructions will be, but we will follow along with your Honor's suggestions.

The COURT. I have done the best I could, yesterday; Saturday and yesterday, and I am going to work again tonight. You have better work tonight and I will talk with you briefly in the morning.

1207 Mr. WOLL. I would like to have the record show, if your Honor please, that we have submitted both sets of instructions, and we consider going along with your proposed instructions up to a certain point so that we have something to look at so far.

The COURT. I have submitted them to both sides. I know I asked you to give me your suggestions the other day and you did give them to me, and I went over them. I had some ideas of my own, and I have combined the three sets of ideas, to the best of my ability, so as to accomplish the purpose which I think instructions should serve.

I shall continue to work on those instructions and to improve them the best I can. I will discuss them with you tomorrow morning.

Mr. FINN. I wanted to give you the additional instruction.

The COURT. I have all of those here.

(Whereupon an adjournment was taken to Tuesday, June 6, 1944, at the hour of 10:00 o'clock a. m.)

* * * * *

Presented in open Court this 19th day of September A. D. 1944.

[SEAL] JOHN P. BARNES,
United States District Judge.

1208 Bill of Exceptions—Volume Three

In the District Court of the United States for the Northern District of Illinois, Eastern Division, at Chicago

No. 44 Cr. 129

UNITED STATES OF AMERICA

vs.

HANS MAX HAUPT

Before Hon. JOHN P. BARNES, Judge and a Jury

Tuesday, June 6, 1944, 10:00 o'clock a. m.

Parties met pursuant to an adjournment.

Counsel present: Mr. J. Albert Woll, United States District Attorney for the Northern District of Illinois, Eastern Division, at Chicago, and Mr. Earle C. Hurley and Mr. Richard G. Finn, Assistant United States District Attorneys for the Northern District of Illinois, Eastern Division, at Chicago, appeared for the United States of America; Messrs. Paul A. F. Warnholtz, Frederick J. Bertram, appeared for the Defendant.

* * * * * *

1209 (Thereupon the following proceedings were had in the Court's chambers, outside the presence and hearing of the Jury:)

The COURT. I don't want you to forego any rights of your clients, but I am anxious to, and I would like to instruct this Jury fairly and clearly. I am anxious to do that, more than I am to make a record for either side.

I don't object to your making a record, but I do want you to help me to instruct the Jury fairly and clearly.

Has either side any suggestion with respect to the first page?

Mr. BERTRAM. I think not on the first page, your Honor.

Mr. FINN. We made some notes as to suggestions.

The COURT. Have you any suggestions with respect to the first page, either side?

Mr. BERTRAM. None for the defendant.

Mr. FINN. None for the Government, your Honor.

Mr. WARNHOLTZ. None for the first page.

The COURT. And the second page?

Mr. FINN. None for the second page. I wonder if there is any way that the record may show that?

1210 The COURT. What is the first page? As soon as we come to a point, somebody has an objection, I will indicate it and make it some way. I intend to number the paragraphs.

Mr. BERTRAM. Perhaps we can number the paragraphs as we go along.

The COURT. Yes; we can number the paragraphs. Then we will know what we are talking about. There are but four paragraphs on the first page. The first paragraph starts with, "It is the duty——

There will be five paragraphs on the second page. The first will be five, will it not?

Mr. FINN. That is correct.

The COURT. They will be numbered 5, 6, 7, 8, and 9.

The first paragraph beginning on 3 is numbered 10, 11, and 12. 13 is the first paragraph on No. 4, then 14, 15, and 16.

The first paragraph beginning on 5 is 17.

The first paragraph on 6 is 18. And paragraph 19 begins with "Definition of Treason." Take out that first quote.

Mr. HURLEY: The definition of "Treason" constitutes the fourth line.

The COURT. Yes; that is 19 and 20 is the definition of Treason in the statute: that is 20.

1211 The indictment in this case is in 21, 22, and 23.

Page 7 is paragraphs 24, 25 and 26.

Page 8 are paragraphs 27 and 28.

Now the next paragraph is moved down. I will skip that—"Every citizen—" pass it for just a moment.

Mr. BERTRAM. Is there a line showing it is moved down two lines; that is not in my copy.

The COURT. It was to have been, and 29 paragraph, "It has been proved" and 30, "It has also been proved," and then "Every citizen of the United States"—is in 31, and then 32.

The next paragraph on page number 8 is 33, 34, 35, 36, and 37.

Now, number 10 is 38, 39, and 40, and it begins with, "The act has been defined."

41. "An overt act is of itself one that may be a perfectly innocent act." That is 41. The Constitution of the United States is 42, and "It is therefore" is 43.

Page 11 is 44, and the third line begins with 45, and then 46 and 47. There will be inserted there on 47, "Overt acts, which are to be submitted for consideration of the Jury as overt acts."

Number 12 is 48, 49, 50, and 51.

1212 Number 13 is 52, 53, and 54.

Number 14 are paragraphs 55, 56, and 57.

Number 15 are paragraphs 58, 59, and 60.

Number 16 are 61 and 62.

Number 17 are 63, 64, and 65.

What is the first paragraph in respect of which you have a suggestion on behalf of the Government?

Mr. Finn. Page 5, number 17.

The Court. What is the first paragraph in which you gentlemen have a suggestion?

Mr. Bertram. Paragraph 6 on page 2.

The Court. Yes.

Mr. Bertram. We have this suggestion and comment to make: That the paragraph generally refers to the Jury believing beyond a reasonable doubt and the two witness rule is not included and the paragraph winds up with the statement that the defendant is guilty as charged in the indictment.

The Court. Well, but that isn't pretended to do anything, except tell the presumption of innocence; that is all paragraph 6 is intended to refer to. That is all it purports to do is refer to the presumption of innocence, and I think it states that rule correctly.

Mr. Bertram. And the same comment on paragraph 8.

Mr. Hurley. Those are both good instructions.

1213 Mr. Finn. If I remember, it has a paragraph——

Mr. Hurley. The two witness element is contained in it.

The Court. You cannot put everything in one sentence. You know if you did we would never get through. You have got to make your instructions intelligent.

Mr. Woll. The subject matter there is "reasonable doubt." I think the defendant is entitled to have stated he pleaded Not Guilty, and the burden of proof as charged in the indictment, you cannot find the defendant Not Guilty unless—I think he is entitled to have that change. I would dislike very much in an effort to be fair—I dislike very much to leave it out.

Mr. Bertram. I wouldn't leave it out, "But beyond a reasonable doubt, also by requiring two witnesses as required by the Constitution——"

The Court. No; I think this is sufficient, what is being said here.

Mr. Bertram. As to paragraph 9, if the Court please, beginning with "Reasonable doubt": that's what the term implies.

1214 "The general effect of this instruction was to compromise and modify the strictness of the rule of law in criminal cases that the jury must believe beyond a reasonable doubt that proof has been made of all facts necessary to convict the defendant or defendants. They are cautioned in this instruction against entertaining any doubt which may be considered imaginary, fanciful, captious, or speculative. Doubt is a state of mine, a fluctuation of mind, or an unsettled state of opinion. Speculation is defined as meaning, of or pertaining to vision. We maintain that all doubt is speculative, and that to inform the Jury that reasonable doubt does not mean every conceivable kind of doubt and does not mean a speculative doubt is to destroy the benefit of

the rule of proof as far as the Accused is concerned. We maintain all doubt is speculative——

The COURT. It doesn't say speculative; it says merely speculative. I am content with that instruction. What is your next one?

Mr. BERTRAM. On page 4. Paragraph 13, the paragraph beginning with the words, "Said witnesses who have testified"—Our objection to this is that the instruction regarding witnesses convicted of felonies supports the credibility of that witness instead of stating it is to be received with caution. Instead of being helpful to the defendant or at least instead of stating the rule that testimony of convicted felons should be received with caution. It does not do that. I think it really gives the testimony build-up, instead of giving us the benefit of an instruction, that is such testimony shall be received with caution.

The COURT. Well, I will consider changing 13.

Mr. BERTRAM. Our next one is as to paragraph 14.

Mr. WOLL. If your Honor please, I won't have another opportunity to say anything about this instruction. I do say I think the instruction is a very accurate statement of the law. If you feel inclined to include in that instruction anything about "Caution," all right, but I do think the instruction as it is, should remain. Perhaps the additional suggestion made by counsel, I think we are entitled to an instruction merely because he has been convicted does not mean he cannot tell the truth. I think we are entitled to the instruction if you do change it, I think there should be an addition rather than taking anything out.

The COURT. I will try and review the law a little bit on that.

Mr. BERTRAM. As to paragraph 14, I don't have any objection, but comment that later on, the Court repeats the charges of the indictment and this statement is limited to the indictment. The fact the Court repeats the charges of the indictment and does not repeat this statement, I think the Jury may lose sight of the fact that the indictment is not evidence.

The COURT. They were told this. I thought they were told that when you examined them.

Mr. WOLL. I don't understand the objection. What is the the objection?

The COURT. He wants repeated again, when we tell them what the charge is.

Mr. BERTRAM. I have nothing further until number 6. Paragraph 19——

Mr. WARNHOLTZ. I think the Government had something on page 5.

Mr. FINN. What is it?

Mr. WARNHOLTZ. You have something on page 5.

Mr. WOLL. Calling your attention again to the last sentence in paragraph 17, "The answers you then made to such questions in regard to your competency, qualification, fairness, and lack
1217 of prejudice—Now, we think after those words, "lack of prejudice" there should be words relative to sympathy; also, I think, under the instructions, "lack of prejudice" could very well go out.

The COURT. I don't think a Jury should be required to be without sympathy. I am a juror in this case and I have sympathy for every defendant that comes into court. No; I won't get into the position of telling a juror he or she should be without sympathy. I think a human being without sympathy is a monster. I am content with that.

Mr. WOLL. All right.

The COURT. Certainly. I don't want to see a lack of sympathy.

Mr. WOLL. I don't insist on that.

The COURT. I may put in something later with that.

Mr. WOLL. Our next is page 7.

Mr. BERTRAM. We have one on 6.

The COURT. Yes.

Mr. BERTRAM. Paragraph 19 on page 6. We have a very serious objection to omitting the part as to the definition of treason. I think the entire definition stated in the Constitution on Treason should be given to the Jury. Give every word, the
1218 entire sentence should be before the Jury and every word has its place in that particular sentence, and the ommission of the words "levying war, et cetera," which are stated in the Constitution, I think is harmful and prevents the Jury from getting the whole sentence as a whole as is stated in the Constitution. I think it is very serious.

The COURT. Does both counsel for the defendant feel that way?

Mr. WARNHOLTZ. I do feel that way, your Honor.

The COURT. You do?

Mr. WARNHOLTZ. I do feel strongly that we can—otherwise the jurors may be of the opinion that treason consists only of giving aid and comfort and it may work to the prejudice of the defendant.

Mr. WOLL. May I ask a question of Mr. Warnholtz, Judge?

The COURT. Yes.

Mr. WOLL. Do you intend to argue, Mr. Warnholtz, before the

Jury that your client is charged with giving aid and comfort by the levying of war; do you intend to argue that way to the Jury?

Mr. WARNHOLTZ. No.

Mr. WOLL. I was going to say an instruction of that kind,
1219 given if an argument was made that way, I have no objection to the definition of treason since the declaration of war is not involved in this case.

The COURT. I think so, too. I think at least to put it in. I think it has a tendency, might have a tendency to confuse the Jury.

Mr. WOLL. I think it will, undoubtedly.

The COURT. But the people who have primarily the responsibility for having these instructions should fairly consider it with respect to the matter, but both counsel insist it should go in, and I don't think I want to stand against them. I think it is better out. You gentlemen should seriously consider that now.

Mr. BERTRAM. Yes, your Honor.

The COURT. I don't want this Jury because of something you see an opportunity which makes you have a very great responsibility there.

Mr. BERTRAM. It isn't captious, your Honor, at all.

The COURT. You both have considered it, and you want it in?

Mr. BERTRAM. Yes, your Honor.

The COURT. You both have thoroughly considered that and you want it in?

Mr. WARNHOLTZ. That is right, your Honor.

1220 Mr. BERTRAM. I believe so; yes.

The COURT. All right.

Mr. BERTRAM. Paragraph 20 would also have to be made to conform, I would say, because the same omission has been made in paragraph 20.

The COURT. Then there will have to be before paragraph 21, 20–A, drawn to this effect. You see, what you do, you have it in, and you have just got to take it out, and certainly it is a bad way to instruct the Jury.

Mr. WOLL. I might say the indictment in this case does not charge "levying of war," that issue is not before us.

The Court. That is certainly a bad way to instruct the Jury. I think maybe I ought to stand against you, gentlemen, I don't know.

Mr. WARNHOLTZ. Here is the Constitution, your Honor.

The COURT. I will strike out the words, so far as the definition is material here, I will strike that out, and then insert in the definition of treason, which are omitted, and in 20 strike out the words, "so far as the definition is material here" and insert there in the asterisk the words which are omitted.

1221 Then make a paragraph, paragraph 20-A, "The indictment in this case does not charge a levying of war against the United States. It does charge an adhering to the enemies of the United States, giving them aid and comfort." I do not like to do things like that.

Mr. BERTRAM. Now, the next paragraph, if the court please, is paragraph 21. I will make this objection or comment to the instruction which later on states, "That the indictment is to be given to the Jury, so that they may take it into the jury room." We believe it is unnecessary, and also it is unfavorable to the defendant, and prejudicial to him for the court to repeat the charges of the indictment as part of the charge to the Jury.

The COURT. Oh, my dear man! How are you going to tell the Jury what the charge against the man is? How in the world can you tell these fourteen people what this man is being tried for?

Mr. BERTRAM. Then I wish to make the comment I made a moment ago, that that paragraph which your Honor is giving that the indictment is not to be considered as evidence, etc., and there should be inserted following the words, the statement——

1222 The COURT. No, no; I don't know how to instruct the Jury what the charges against him are, otherwise, than substantially in the words of the indictment, and I have already told them clearly the story as I can, that the indictment is not evidence or the fact he was indicted is not to be considered as evidence.

Mr. BERTRAM. Now, if the court please, as to paragraph 23, I make the further objection or comment that the statement here, "The indictment further charges, et cetera," that Herbert Haupt during a short period of time mentioned, served the German Reich, and I believe it is not clear what period of time is referred to in that.

The COURT. I thought that would make it more clearly, and would be better. Now, if you want that changed——

Mr. BERTRAM. If the court please——

The COURT. Listen to me. Are you gentlemen just looking for changes to be made?

Mr. BERTRAM. No, your Honor.

The COURT. All right.

Mr. BERTRAM. I mentioned dates, June 17, 1942, to July 17, 1942, namely, the dates and the period.

The COURT. That is exactly the way it is in the indictment, and throughout the period of time mentioned in this indictment.

1223 You want that changed from June 17——

Mr. WARNHOLTZ. Namely, during the period of time above mentioned, namely, June 17, 1942, to July 17, 1942. Then if your Honor please—well, never mind.

Mr. BERTRAM. If your Honor please, there is another comment

as to the word "included" at the end of the fifth line in the 23rd paragraph, whereas, the indictment used the word "involved." I think there is a little different meaning to the word "included."

The COURT. You want it "involved."

Mr. BERTRAM. "Involved," yes. Now, paragraph 24 on page 7.

The COURT. Yes.

Mr. WARNHOLTZ. There are some words in here which are not in the indictment, words like "National Defense of the United States."

The COURT. Where is that?

Mr. WARNHOLTZ. In the third line of paragraph 24.

Mr. WOLL. The last paragraph on page 2 of the indictment——

The COURT. I don't see how it changes it. It only shortens it a bit.

Mr. BERTRAM. You will find on another page in the indictment——

1224 Paragraph 26, if the court please, reference is made to receiving, holding possession, safeguarding and concealing the property and funds of said Herbert Haupt.

And this evidence was suppressed. The overt acts were also withdrawn, or were to be withdrawn from the Jury, and I think that might well be omitted.

The COURT. I don't think so.

Mr. WARNHOLTZ. The prejudicial part, if the court please, is this: That after the Jury entered upon its service, the newspapers stated, with the comment on the testimony of Hamby, I believe, that the money which he mentioned was the money that was found in the Haupt home, and the evidence was suppressed. That statement was made in the newspapers.

The COURT. They had other evidence.

Mr. WARNHOLTZ. They had other evidence regarding that?

The COURT. Why, sure; the inference was there after the arraignment.

Mr. WARNHOLTZ. That I do not believe they mentioned specifically any money. It may have done so, but——

Mr. WOLL. Hamby and Norris both testified to it.

Mr. WARNHOLTZ. Hamby and Norris?

1225 Mr. WOLL. Yes; testified that Hans Haupt took the money and hid it under a rug——

Mr. WARNHOLTZ. Oh, no. Mr. Robe or Mr. Hirsh.

Mr. WOLL. Correct. Correct. That is right.

Mr. WARNHOLTZ. Those are the two, I believe. It was only one, that is, one of the two witnesses.

Mr. FINN. I might say on that subject, Robe did testify on that subject.

Mr. WARNHOLTZ. What did he say?

Mr. FINN. He said he had a large sum of money——

Mr. WARNHOLTZ. That Herbert or Hans had?

Mr. FINN. Well, it doesn't make any difference. It was controlled by him.

Mr. WOLL. The fifth line in paragraph 26——

Mr. WARNHOLTZ. No agent testified to that.

Mr. WOLL. I think perhaps it might be more accurate if we did use the language in the indictment. The indictment says, receiving, harboring Herbert Haupt, it says, "receiving, harboring, relieving, and assisting Herbert Haupt by automobile, and in his furnishing hospitality to Herbert Haupt."

Do I make myself clear? I think that is on the third page of the indictment.

The COURT. Yes: in his receiving, harboring, relieving, and assisting Herbert Haupt.

1226 Mr. WOLL. And then after Herbert Haupt, in transporting him by automobile.

The COURT. Transporting him by automobile.

Mr. WOLL. That is the only insert I have in mind.

The COURT. And in his furnishing hospitality to Herbert Haupt.

Mr. WOLL. Yes; that reads on, the way the indictment covers it.

The COURT. Have you got anything further?

Mr. BERTRAM. And that said giving——

The COURT. Where is that?

Mr. BERTRAM. Third line in paragraph 26, so as to make it clear the indictment charges, and that said giving of aid and comfort, etc.—inserting the word "that" after the word "and" in the third line.

The COURT. And charges that the adherence of the defendant Hans Max Haupt to the Government of the German Reich, its counsellors, armies, navies, agents, representatives, and subjects, and said giving of aid and comfort by him consisted in his receiving, harboring, relieving, and assisting Herbert Haupt by automobile—"And said giving," you don't want that in there?

Mr. BERTRAM. No.

Mr. WOLL. I take it, your Honor is not interested in the spelling, are you?

1227 The COURT. Yes.

Mr. WOLL. You are. I think on page 7, the "recruiting" is spelled incorrectly, and on page 7 also the word "employment."

The COURT. Where is that?

Mr. WOLL. The fifth line from the bottom.

Mr. HURLEY. On the left hand side.

Mr. WOLL. There is an "o" instead. Now, the next page, page

Mr. WARNHOLTZ. One minute, kindly, Mr. Woll. Have we disposed of the matter regarding the money, that counsel believed was furnished by Herbert Haupt?

The COURT. I think there is evidence on it.

Mr. WOLL. On page 8, the word "comfort" is misspelled.

The COURT. Where is that?

Mr. WOLL. In the 28th paragraph.

The COURT. "C-o-m" not "O".

Mr. WOLL. That is as far as we have reached right now. The defense may have some suggestions.

Mr. BERTRAM. There is comment as to paragraph 28, so that repetition of the charges of the indictment and the frequent reference to said treason of the defendant by the court in this charge.

The COURT. Where is that?

1228 Mr. BERTRAM. Well, in paragraph 28, the execution of said treason in the second line of paragraph 28.

The COURT. Well, it is further alleged, it is telling them what the allegation is on.

Mr. BERTRAM. Of said alleged treason.

The COURT. It is further alleged, that is a further allegation.

Mr. BERTRAM. Now, in paragraph 30, if the court please, the objection is that the instruction is too broad that former agents or spies, who were not pursuing that mission are included in the terminology there. There is no statement by the court that required that at the time of the charges in the indictment, namely, June 17, 1942, to July 17, 1942, they should be then engaged in work as spies or saboteurs.

Mr. WOLL. You used the tense of persons.

The COURT. Well, it is mentioned in the indictment, namely, from June 17, 1942, to and including July 17, 1942, on the second line of 30.

Mr. BERTRAM. And on page 9, which is still paragraph 33, this, I believe, is objectionable, because it implies that the doctrine of constructive treason is applicable in the United States.

The COURT. How is that?

1229 Mr. BERTRAM. When a state of war exists, any act done deliberately and intentionally and with treasonable intent as defined by one owing allegiance to the United States, is by a fair construction——

The objection is to the words "fair construction," and the objection is made to those words, which would permit the theory of a constructive treason to be enforced in this case, which is not the law in the United States, as I understand it.

The COURT. What is constructive treason?

Mr. BERTRAM. Well, the Old English Law imagining the death of the King by reflection or construction of certain acts, were con-

strued to be treason by construction, where the acts themselves were innocent of themselves, but were of themselves of the nature that manifested a treasonable intent.

The COURT. Well, manifested a treasonable intent, those words are used in two different tenses. One school of thought, which I understand was refuted in this country, holds that manifesting a treasonable act requires an act not of itself separated from everything else, but shows a man who does it, has committed treason; and the other school of thought, as I understand it, which is accepted in this country, is that the overt act need not of
1230 itself show to the world that is a treasonable act, need not of itself show to the world that the treasonable act, if it be done by one who is adhering to the enemy of the United States, or is levying war on the United States. So just talking about manifesting something, we don't get anywhere.

Mr. BERTRAM. My point is this: Maybe I can clear it up. Under this particular paragraph, a defendant might be guilty of treason by the mere construction of an act which he did not do with the intent of committing treason.

The COURT. Wait right there, in 32 I say, "Although not explicity set forth in either the constitutional or statutory provision, an intent to give aid and comfort to the enemy is an essential element of the crime of treason. Without an intent to give aid and comfort to the enemy, there is no treason.

When a state of war exists, any act, done deliberately and intentionally, and by one owing allegiance to the United States, with treasonable intent as hereinbefore defined, which, by fair construction, is directed toward the furtherance of the hostile designs of the enemies of the United States, and which gives them aid and comfort (or if that is the natural effect of
1231 the act) is treasonable in its character.

The words in the United States statute, "adheres to their enemies, giving them aid and comfort," and words of similar import in the constitution mean in general any intentional act done with treasonable intent as heretofore defined by one owing allegiance to the United States which clearly indicates want of loyalty to the United States and a sympathy with its enemies, and which, by their construction, is directly and intentionally done in furtherance of the hostile designs of the enemy; or to strengthen the enemy, or weaken the power of the United States to resist or attack the enemy.

Mr. BERTRAM. My point is, it nullifies the effect of the requirement of the treasonable intent.

The COURT. No, it requires treasonable intent.

Mr. WARNHOLTZ. I am much concerned about this, about the

fair construction as to the words, if that is the natural effect of the act, that is one thing, but it seems to be objectionable.

Mr. WOLL. That takes in the allegiance hereby defined by one owing allegiance to the United States by the treasonable intent as heretofore defined.

The COURT. The word "by" is here.

Mr. WOLL. Treasonable intent heretofore defined.

1232 The COURT. Yes; there is a "by" in the line above in pencil.

Mr. WOLL. Well, mine hasn't got that.

The COURT. What do you want me to do? Do you want me to take out something?

Mr. BERTRAM. Or, if; that is the natural effect of the act. That is the only thing, I think, that might be objectionable.

The COURT. What do you say?

Mr. WOLL. What do you want, Mr. Warnholtz?

Mr. WARNHOLTZ. I wish to have taken out, "or, if, that is the natural effect of the act."

Mr. FINN. That is the exact instruction that was given in the Cramer case.

Mr. WARNHOLTZ. I am not much concerned with the Cramer case. I have read that case, and we have an opinion as to what is good law, and what is bad law. I have read some law that would almost make you shudder, and the Cramer case is one of them, also the Steffan case.

Mr. FINN. It seems to me, the way the defense counsel is being confused here about treasonable intent, it seems to me the difference between treasonable intent and a just interpretation of an act that is performed. Now, then, you say definitely

1233 that act has been done with treasonable intent. Now, then, you get away from treasonable intent, you say that particular act has to be the kind of an act which a Jury by a fair construction believes is directed in furtherance of the design.

The COURT. I think 33 is all right.

Mr. BERTRAM. We would like to have stricken out, "or, if, that is the natural effect of the act."

Mr. FINN. It is good law.

The COURT. Anything wrong with 34?

Mr. BERTRAM. My objection to that is it would confuse the Jury. The precise definition referred to by the court is not clear. It is so far removed from the constitutional definition of treason.

The COURT. My dear sir, in adhering to the enemy, giving them aid and comfort, those are one of the very things, very thing with which this defendant is charged. What are you referring to now, 34?

Mr. BERTRAM. Yes, 34.

The COURT. "Adheres to their enemies, giving them aid and comfort," and words of similar import in the constitution
1234 mean in general any intentional act done with treasonable intent as heretofore defined by one owing allegiance to the United States, which clearly indicates want of loyalty to the United States and a sympathy with its enemies, and which by fair construction, is directly and intentionally done in furtherance of the hostile designs of the enemy, or to strengthen the enemy, or weaken the power of the United States to resist or attack the enemy.

Now, that isn't hedged. Just about how you may limit your question and still leave anything, I don't know.

Mr. WOLL. I don't think I understand the objection to it. Would you mind telling me what your objection is?

Mr. WARNHOLTZ. It is withdrawn.

Mr. WOLL. Judge, may we go back now to 32? I feel that is rather strange, and may I make this suggestion to you, to put in 32, it might be better if we put it in there, "although not explicitly set forth in either the constitutional or statutory provisions, an intent to adhere to the enemy and give them aid and comfort—" It might be better to put that in that way.

The COURT. Well, I think it would.

1235 Mr. WARNHOLTZ. No objection to that.

The COURT. Where is that?

Mr. WOLL. Unless you have no objection, we desire——

Mr. WARNHOLTZ. We have no objection to inserting that, Judge.

The COURT. I am inserting "to adhere and to give aid and comfort to the enemy."

Mr. WARNHOLTZ. That is all right.

Mr. WOLL. Yes.

The COURT. And then to adhere and to give aid and comfort, there is no treason. Now, 35 is next.

Mr. BERTRAM. 35. We believe that that destroys the entire theory of the defense of relationship of father and son in this case. The court starts out the instruction by saying, "Regardless of any blood relationship which may have existed between Herbert Haupt and Hans Max Haupt—" etc.

Mr. WARNHOLTZ. There, you have considered, your Honor, the relationship between father and son. Apparently, according to some of the instructions as the law is generally to some extent, it limits the law.

The COURT. Well, in 37 I say, "If you believe the defendant's intention in doing what he did during the period from June
1236 17, 1942, to and including July 17, 1942, was not in any way to injure the United States, but merely to assist his son,

Herbert Haupt, as an individual, as distinguished from assisting him in his purpose, if such existed, of aiding the German Reich, or of injuring the United States, the defendant must be found Not Guilty.

Now, in this instruction, number 35, we do say that if he committed the act and the father knew the act was intentionally with knowledge of the fact that the boy was an enemy. Well, if he had no knowledge of the fact——

Mr. WOLL. That is why we get it in here. With knowledge of the fact.

Mr. WARNHOLTZ. That is right. It would mean, we didn't need the other one at all. We wouldn't need the other one at all, because it there was no knowledge of the facts, we don't need the father and son theory. This instruction would apply to every person. This is an instruction where I think we ought to separate the thing. We should have possibly such change.

The COURT. Do you think 35 is all right?

Mr. WOLL. Yes, we do.

The COURT. I don't see anything wrong with it in the light of what we said.

Mr. BERTRAM. It says even if a father was intending only to aid his son, if he had knowledge of the fact re-
1237 garding the enemy status, it doesn't make any difference what the purpose of his actions.

Mr. WOLL. We have the treasonable intent heretofore defined.

Mr. WARNHOLTZ. If the father committed it and it was done for the purpose of aiding treason, then we would say it was performed intentionally and with knowledge of the fact he was an enemy agent, and done with treasonable intent as heretofore defined.

Mr. FINN. I think we are avoiding all possible danger there.

Mr. BERTRAM. You are telling them of the relationship, your Honor.

The COURT. I have no right to help my son commit treason, particularly if I do it with treasonable intent.

Mr. WARNHOLTZ. If that could be brought out.

The COURT. I am content with it. What about 36?

Mr. BERTRAM. Our objection for that is that the paragraph doesn't speak of the necessity of proving the enemy status at the time charged in the indictment, namely, June 17, 1942, to July 17, 1942, is not mentioned in the paragraph at all, and is
1238 not even limited to the overt acts as to them.

The COURT. Well, we will insert a second line that by the general principles, for instance, you will find if beyond a reasonable doubt that during the period between June 17, 1942,

to and including July 17, 1942, Herbert Haupt was an agent, and so on. Now 37.

Mr. WOLL. Your Honor, I would like to go back to 35, if I may.

The COURT. Yes.

Mr. WOLL. To the particular instruction, the only thing I have wondered is about the words, "of any act or acts performed by Hans Max Haupt."

That is the third line, if we have to prove an act performed by him, which has been alleged in the indictment.

Mr. BERTRAM. What is that paragraph?

Mr. WOLL. 35. It is a specific instruction.

The COURT. How do you want to change it?

Mr. WOLL. Would it do to say this, "or in consequence of any act or acts performed by Hans Max Haupt as alleged in the indictment"?

The COURT. As alleged in the indictment and submitted for your consideration in these instructions?

Mr. WOLL. Something like that.

1239 Mr. BERTRAM. Where is that?

The COURT. After Haupt, in the third line.

Mr. BERTRAM. As alleged in the indictment. Don't you think that we should also say, "if you believe that any acts were performed"?

Mr. FINN. That could be put in there also.

The COURT. "Regardless of any blood relationship which may have existed between Herbert Haupt and Hans Max Haupt, if you find that the natural effect or consequences of any act or acts, as alleged in the indictment submitted to you for your consideration, if any were performed."

Mr. BERTRAM. That goes to the entire indictment.

The COURT. Regardless of blood relationship, blood relationship which may have existed between Herbert Haupt and Hans Max Haupt, if you find that the natural effect or consequence of any act or acts performed by Hans Max Haupt was to give aid and comfort to Herbert Haupt in his capacity as an enemy agent, and that such act or acts were performed intentionally with knowledge of the fact that he was an enemy agent, and with treasonable intent as hereinbefore defined, then such act or acts were treasonable in character.

Mr. WOLL. What instruction are we now on?

1240 Mr. BERTRAM. 39 will be next.

Mr. FINN. Do you have any further objections to that one?

Mr. BERTRAM. I have no further objections.

Mr. FINN. And this particular one is 35.

Mr. WARNHOLTZ. Not in addition to those stated.

Mr. BERTRAM. Now, 39 gives the definition of the overt act in criminal law as used, etc. The objection is that in treason the overt act is different from an overt act in ordinary criminal offences, and the objection is that in treason the act itself must manifest——

The COURT. I am against you on that. I will strike out the words, "in criminal law", if you want.

Mr. BERTRAM. I don't know that that makes any difference one way or the other, the words "in criminal law."

The same comment I will make as to paragraph 40. Paragraph 41, I think it is confusing. The court says it may be a perfectly innocent act standing by itself. It is not—I don't think it is a complete statement. I don't know if perhaps a word can be inserted following there, "but it must be in some manner in furtherance——"

Mr. WOLL. I will make this suggestion also, if your
1241 Honor please. It might be better to say the overt act in itself may be perfectly an innocent appearing act, because the act can be an innocent act, as you see, of itself, right when it is done, in furtherance of treason, then it loses itself as an innocent act when done in furtherance of treason.

The COURT. I think that is a little more accurate.

Mr. WOLL. Yes, if your Honor please.

The COURT. What is the 259 Fed.?

Mr. FINN. 259 Fed?

The COURT. 677.

Mr. FINN. That is the Fricke versus United States case, during the last war, but that never went up.

The COURT. Judge Mayer, he was a good lawyer. He was a very good lawyer, and Judge Gaffey was the United States attorney.

Mr. WOLL. Maybe I am too cautious, Judge; I don't know.

Mr. FINN. We would rather be cautious than be required to do this over again.

The COURT. Which one are you speaking of—41?

Mr. FINN. "Perfectly innocent appearing act" perhaps would be safer. I think perhaps that if "but" is put in there, that will clear that up, and it makes it perfectly clear and proper.

The COURT. Standing by itself?

Mr. FINN. When you connect it up with——

1242 Mr. BERTRAM. I believe words "innocent appearing," it helps somewhat.

Mr. FINN. I think that will clear it up, Mr. Bertram.

Mr. BERTRAM. You put a "but" in there, but it must be in furtherance——

The COURT. I think I am content with that.

Mr. BERTRAM. Are you going to make any change there?

The COURT. Put in a "but".

Mr. BERTRAM. But not putting in the word "appearing"?

The COURT. No.

Mr. BERTRAM. Now, in paragraph 43, the objection is mostly to the form of the instruction. Ordinarily the court instructs the Jury that it is necessary to prove so and so, and unless it is proven, the defendant should be found Not Guilty. Here it anticipates that the Jury is going to find him Guilty, because it says it is necessary before the defendant can be found Guilty, that so and so shall be established. We believe it should be stated in just the reverse, then, unless those things are established, the defendant should be found Not Guilty.

Then there was one further suggestion, using the word "alleged".

1243 The COURT. How do you want that?

Mr. BERTRAM. That unless the crime charged against the defendant is established beyond a reasonable doubt, and so forth, the defendant should be found Not Guilty. Winding up the instruction that way.

The COURT. I haven't any objection to inserting the word and putting it in the other way, right following 43.

Mr. BERTRAM. You mean in the paragraph following, you say you have no objection?

The COURT. Yes.

Mr. BERTRAM. Before we pass 43, just before the words, "the giving"—one, two, three, four, five, six—the sixth line of the paragraph—he said, "alleged adherence, and the giving, the alleged giving," you can insert the words, "alleged giving."

The COURT. How do you want that phrased now? I want to hitch it onto this. I don't want to take their minds away from this subject.

Mr. BERTRAM. A good sentence would be——

The COURT. Put it this way: "As established beyond a reasonable doubt, not only that the defendant intentionally treacherously and treasonably adhered to give aid and comfort to the

1244 enemy alleged in the indictment, but also that the said defendant, in furtherance of said alleged adherence in the alleged giving of aid and comfort, intentionally and treasonably performed at least one of the alleged overt acts submitted to your consideration by the court in these instructions.

Mr. BERTRAM. Could we say: "The Jury must find the defendant Not Guilty"?

The COURT. You left out the important thing.

1245 The COURT. "Has also established said alleged overt act."

I am going to insert "has also established said alleged overt act beyond a reasonable doubt by the testimony of two direct witnesses to the same act, you will find the defendant not guilty."

Mr. WARNHOLTZ. That will be 43-A?

The COURT. I have inserted that in the third line from the bottom.

Mr. BERTRAM. You are going to insert that in both paragraphs?

The COURT. Yes.

Mr. FINN. The record will show, I take it, that it was given at the suggestion of the defendant?

The COURT. Yes; do you see anything wrong with it?

Mr. WOLL. We do not like the term as I read it, but if your Honor wants to give it that way——

Mr. BERTRAM. On paragraph 44, I note on page 12 the Court again makes the same statement. I do not think the Court wants to say that in two places.

The COURT. Where?

Mr. BERTRAM. On page 12.

Mr. FINN. What paragraph?

1246 Mr. BERTRAM. Paragraph 50, I think it is: "More than one of the submitted overt acts." Both are on the same subject matter and also begins in the same way, "It is not necessary."

The COURT. Well, suppose we take out 44?

Mr. BERTRAM. All right.

The COURT. Then that paragraph I have inserted will bear the number 44.

Mr. BERTRAM. As to 45, I was wondering as to whether or not "foregoing provision of the Constitution" will be clear to the jury when it is so far away from the original definition?

The COURT. I think you have got to assume that the jury has some intelligence.

Mr. BERTRAM. Then in the last sentence, "By the term 'witnesses' is meant persons who testify to the commission of any of the alleged overt acts submitted to your consideration."

We think it should say, "by the term 'witnesses' is meant persons who themselves actually witnessed the commission of the alleged overt act."

The COURT. The trouble with that is you say a witness is a witness.

Mr. BERTRAM. I think that is my opinion; your Honor is trying to clear it up.

1247 The COURT. Here is the point, when you in your limitation say a witness is a witness, the danger is there. You want to limit the matters which a person knows by his own senses?

Mr. BERTRAM. Yes.

The COURT. I do not think the statute or the Constitution requires the limitation to what a man know by his senses.

Mr. BERTRAM. May I clear it by an illustration? For example, the witnesses Majerczak or Hamby, the way the language is used here are persons who testified to the commission of an alleged overt act in the eyes of the jury.

Mr. FINN. I do not think so.

The COURT. No.

Mr. BERTRAM. They have testified regarding acts that are also alleged in the indictment, on the very point that the——

The COURT. "Rather than to any alleged admissions made" that takes that right out.

Mr. BERTRAM. I think that is the danger.

The COURT. "By the term 'witnesses' used in this connection the Court does not mean persons who testify to admissions, if any, purportedly made by the defendant before the commencement of this trial."

1248 Mr. BERTRAM. That is not the reason. That is not the reason. We do not make that contention.

The COURT. I do not think it is for the Court to say "a witness is a witness" or "a witness is one who has witnessed." This says: "Neither admissions, if you believe any were made by the defendant nor persons who took the stand to testify to such admissions, if any are 'witnesses' within the meaning of the foregoing provisions of the Constitution, and neither such admissions, if any, nor any persons testifying to them, if any, can be considered by the jury as a substitute of the constitutional requirement."

That word "of" is changed to "for".

Mr. BERTRAM. It would need something else.

The COURT. "By the term 'witnesses' is meant persons who testify to the commission of any of the alleged overt acts submitted to your consideration by the court rather than to any alleged admissions made about them."

I do not feel very strongly about that. What do you say?

Mr. WOLL. We think it is limiting on the government. We put it in there. We feel it is limiting us. If they do not want that in, all right; we will take it out.

1249 Mr. BERTRAM. We say it is tautological and repetitious, repetitious language, if we could use the term "witnesses may be persons who actually witnessed the commission of the alleged overt act."

Mr. HURLEY. We object to any language such as that.

Mr. WOLL. We will take it out if he wants to take it out.

Mr. HURLEY. His suggestion merely confuses it, in my opinion.

Mr. FINN. We want to have it clear.

Mr. BERTRAM. The only objection is it is tautological and repetition, but sometimes the repetition tends to clarification. I think it would in that particular sentence, if the Court would adopt that suggestion of "actual witness on commission."

Mr. WOLL. We will take out the last sentence—that is, if they agree to it. Mr. Bertram suggests we leave it out. We will be glad to leave it out.

Mr. BERTRAM. I do not know if my suggestion was good, taking it out, but I do feel that——

The COURT. I have said there must be two direct witnesses to the same act.

Mr. BERTRAM. Is there anything wrong or objectionable about putting in who actually saw the actual commission?

The COURT. That is something more than the statute
1250 requires. I have said direct witnesses. I have limited the language with the word "direct" so I will leave that there.

Mr. BERTRAM. I mean in the last sentence now.

Mr. HURLEY. We suggest that it either stand or else take it completely out.

The COURT. If you want to I will take it out. If you do not want it out, it will stand.

Mr. HURLEY. It will stand as far as we are concerned.

The COURT. "Unless the Government has established beyond a reasonable doubt not only that the defendant intentionally, traitorously and treasonably adhered to and gave aid and comfort to the enemy, as alleged in the indictment, but also that the said defendant, in furtherance of said alleged adherence and the alleged giving of aid and comfort, intentionally and treasonably performed at least one of the alleged overt acts submitted to your consideration by the court in these instructions, and has also established said overt act beyond a reasonable doubt by the testimony of two direct witnesses to the same act, you will find the defendant not guilty."

Mr. BERTRAM. I have no objection to that 43–A.

1251 Mr. WOLL. I object to the beginning, "Unless the Government has established"—also "adhered to and gave aid and comfort to the enemy, as alleged in the indictment—in furtherance of said alleged adherence—intentionally and treasonably performed"—and so on.

Mr. BERTRAM. It was correct as stated. It is correct as stated by the instruction.

Mr. WOLL. That is what I have in mind.

The COURT: I was thinking that I could make it better. The trouble is that I have got not only an "and" and "but also." I have "and" again which is not very good English.

Mr. BERTRAM. I think the English is quite good. I do not think that is a criticism.

The COURT. Let me have that for a minute. I think that is all right. I do not think the jurors decide cases on grammar, anyhow.

Mr. BERTRAM. If the Court please, I will agree to the elimination of the entire sentence, "by the term 'witnesses' is meant persons" which Mr. Woll has suggested.

Mr. WOLL. As long as it is definitely clear in the record——

The COURT. You will be content.

Mr. BERTRAM. With your previous statement: yes, sir.

1251-A Mr. WOLL. There is one other thought I had in that connection, if your Honor please. I do not know whether there are any "requested" instructions along that line, but I assume the Court will mark the requested instructions of the

1252 defendant which your Honor thinks have been given, or given in substance. I do not like to have the defendant have anything in the requested instructions, and in that particular last sentence, and say that their requested instruction was refused.

Mr. BERTRAM. I do not see why Mr. Woll is always tying——

Mr. WOLL. I have gone through one case, up to the upper court, to the Court of Appeals.

Mr. BERTRAM. I submit that he makes a statement and tries to have us——

The COURT. Just a minute. I do not think that last sentence adds anything to the instruction.

Mr. WOLL. Does your Honor understand what I said the last time when we were in here?

The COURT. Well, I might go through the instructions which you gentlemen have tendered.

Mr. WOLL. I see.

Mr. BERTRAM. Now on 47 "The Court is submitting to your consideration as possible overt acts of treason the following alleged acts charged in the indictment."

It is our contention that this manner of statement indicates to the jury that the court considers those that are enumerated as sufficiently proved.

1253 The COURT. How would you state it?

Mr. BERTRAM. I would state that the Court is submitting to the jury for their consideration upon the question of the guilt or innocence of the defendant in this case the following overt acts alleged in the indictment.

The COURT. Well, that is the big thing you want in. They stand in there and they can be considered on the question of in-

tent, if only one person testifies, but if they are submitted as overt acts on treason——

Mr. BERTRAM. I understand that your Honor was submitting twelve overt acts which you have designated.

The COURT. Yes.

Mr. BERTRAM. And then you ask how I think they should be submitted. I think the Court submits to the jury for their consideration——

Mr. WOLL. As what?

The COURT. Overt acts of treason, as what?

Mr. BERTRAM. The following overt acts as alleged in the indictment.

The COURT. No; they are overt acts of treason. We are talking about treason.

Mr. BERTRAM. This paragraph in connection with the paragraph that follows implies that the Court is telling the
1254 jury that these acts have been established by the evidence in the case. It invades the province of the jury in my opinion and practically excludes the question of guilt or innocence as to those submitted overt acts from the jury's consideration.

The paragraph following says that the others were not proven by the degree of proof required and the inference is that they were proven.

Mr. WOLL. May I call your attention to paragraph 51, if your Honor please?

The COURT. "By submitting the alleged overt acts above read to your consideration, however, this Court does not mean to intimate or infer in any way, either its belief or disbelief that any alleged overt acts of treason have been committed by this defendant, or that any overt acts of treason have been proved by the required two witnesses."

Mr. BERTRAM. I have remarked that is removed by two or three paragraphs from 47 and the implication is still there that the "possible acts" which is the term used have been proven and they have not been submitted to the jury for their determination upon the question of guilt or innocence of the defendant. We go into other subjects in paragraph 48 and 49.

The COURT. They are all overt acts. I suppose we are talking about overt acts?

1255 Mr. HURLEY. Each one of them relates to overt acts, straight down to 51.

Mr. BERTRAM. I think that is a matter which invades the province of the jury, in effect amounts to a direction to the jury on submitted overt acts.

The COURT. "As possible" "as possible."

Mr. BERTRAM. I think the implication is clear when you read the two paragraphs, 47 and 48 together, that the jury will get the impression.

The COURT. They have got a duty and they will get impressions. You cannot, just because they are jurymen, expect they will leave their common sense at home. A juryman is not supposed to be without judgment.

Mr. BERTRAM. Will your Honor submit that in neutral language?

The COURT. I am trying to. If they are not—what do you want me to call them? I have got to call them overt acts of treason.

Mr. BERTRAM. Can you not say the Court submits to the jury the following overt acts alleged in the indictment which would read as follows?

Mr. HURLEY. Overt acts of what indictment?

Mr. BERTRAM. Can you say overt acts of treason?

Mr. HURLEY. That is what he said.

1256 The COURT. I do not think you are helping it. There is "possible" and "alleged" and I am just thinking, you cannot try a man for treason and then not talk about treason.

I am entirely willing to bring 51 right to follow the twelve acts which I give.

Mr. BERTRAM. That would certainly help some.

The COURT. I do not think it needs any help.

Mr. HURLEY. I do not either.

Mr. BERTRAM. Do you want to renumber them?

The COURT. Change the number, it would be——

Mr. BERTRAM. 47 to 48.

The COURT. This will be 48.

Mr. BERTRAM. That is, beginning with "By submitting the alleged overt acts——

The COURT. Yes. And 48 will become 49, and 49 will become 50, and 50 will become 51.

Mr. BERTRAM. The paragraph 50, the objection is that this instruction directs a verdict of guilty against the defendant and it excludes the chief theory of defense of father and son relationship and aiding Herbert merely as a son; and also, I do not know whether or not the word "direct witness" is so clear.

1257 The COURT. Well, you have got "unlawfully" "and traitorously". We will insert "with treasonable intent as hereinbefore defined."

Mr. BERTRAM. Where is that to go?

The COURT. It is in the eighth line.

Mr. BERTRAM. "Did adhere"?

The COURT. "And treasonably—and with treasonable intent as hereinbefore defined" make it.

Mr. BERTRAM. "Treasonable intent as hereinbefore"?

The COURT. "And, with treasonable intent as hereinbefore defined did adhere to and give aid and comfort to the said Herbert Haupt as an enemy, all as alleged in the indictment and that in furtherance of or in carrying out—with said treasonable intent performed any of the above alleged overt acts submitted for your consideration."

There is "treasonable intent" again—"and that two direct witnesses have testified to such act, then you may find the defendant guilty".

Mr. BERTRAM. The same comment I have made before, the reverse of that proposition being stated, "if you do not so find the defendant——"

Mr. WOLL. Well, we have it one time that the Government must prove. That means find him guilty. In the beginning did we not say if we had proved him guilty, they must find him
1258 guilty? He has told them if they do not find—the converse. We have already told them before, if we do not prove him guilty "you must find him not guilty".

The COURT. How do you want that ended up?

Mr. BERTRAM. "Otherwise you must find him not guilty"—"the defendant not guilty".

The COURT. I have added that to 50, as the new 50.

Mr. BERTRAM. "Otherwise you must find the defendant not guilty".

The COURT. Yes.

Mr. BERTRAM. All right. On paragraph 52, "The success or failure of any alleged mission upon which Herbert Haupt may have been engaged——"

The COURT. What are those overt acts? Have you got those?

Mr. HURLEY. They are 10 to 17 and 20 to 23, inclusive.

Mr. BERTRAM. 10 to 17 and 20 to 23.

The COURT. I do not understand this.

Mr. WARNHOLTZ. Those are all the numbers, your Honor. This is 10 to 17, and this is 20 to 23, which makes up twelve.

Mr. BERTRAM. If the Court is ready for the next one, paragraph 52—I think it is still 52—"The success or failure of any al-
1259 leged mission upon which Herbert Haupt may have been engaged, if you believe beyond a reasonable doubt that he was engaged on a mission for the German government".

It does not refer to the time of the overt act, or does not state, "If you believe he was engaged during the period of June 17, 1942 to July——"

The COURT: "During the period mentioned for the German Government—" to July?

Mr. BERTRAM. On paragraph 53, this seems to be the fourth time that the Court has referred to them finding the defendant guilty. It uses that same manner of speaking—"before you can find the defendant guilty"—anticipates that they are going to find him guilty. I say also it is the fourth time that the Court has used "find him guilty."

Mr. WOLL. They cannot find him guilty unless it has been proven.

The COURT. I think you are overly critical of that "before you can find him guilty", got to find all those things. I do not know how you can state that any better than it is.

Mr. WOLL. He would like to have each instruction wind up with "Not guilty."

The COURT. That does not do any good.

1260 Mr. BERTRAM. I want to make the further objections, if the Court please; to the sentence which reads: "This is not necessary, for every man in law is presumed to intend the natural and probable consequences of his acts if they are deliberately done."

Our objection is that the statement is incorrect, when it is applied to the crime of treason, because the specific intent is the necessary thing in a crime of treason; it is the intent that makes the act that otherwise would not be treason. This says specific intent appears not to be necessary.

Mr. HURLEY. Further, it says what is meant.

Mr. FINN. It does not say that at all, if your Honor please. The only difference between any specific intent and constructive intent is where one is engaged in the commission of some unlawful act and commits some other offense, then the law will carry over the constructive intent, such as when one commits robbery and in the midst kills a man. Specific intent can be proved from the direct act but not by direct testimony, being a mental process.

Mr. BERTRAM. In robbery or murder that is the point I want to bring out—in robbery or murder. You have not got the
1261 situation in treason. If a man robs, he robs; in treason it is intent.

Mr. FINN. Intent may be inferred from the acts.

Mr. BERTRAM. You cannot infer intent from the acts. You must have specific proof of intent to make it treason.

The COURT. I will let this stand.

Mr. FINN. Specific intent is specific intent.

Mr. BERTRAM. In violence you have your overt act.

The COURT. Let it stand.

Mr. BERTRAM. And the next sentence follows is also objectionable from the same ground.

The COURT. Which is that?

Mr. BERTRAM. In the same paragraph, "Anyone who is conscious of his acts—" and so on.

The COURT. Well, that is taken care of.

Mr. BERTRAM. I do believe that that is erroneous in a treason case. Mr. Woll's analogy to murder and robbery is not at all applicable to treason; specific intent must be proven under all circumstances in treason.

The COURT. How would you prove it? Do you have to prove in every case that the defendant says "I intend to commit treason?"

1262 Mr. BERTRAM. Suppose we should inform the jury that specific intent is not necessary? I think that is what this instruction does.

The COURT. This tells them he must have the intent, but it does not mean that before it goes to the jury somebody must get on the stand and say "John Smith said that he had an intent to commit treason," that is not necessary.

Mr. BERTRAM. In one case buying a car, and giving food, in the other case—not like robbery with a gun, or murder. It is a principle of criminal law which is found in robbery or murder cases. It does not apply in treason cases at all because that is so different.

Mr. WOLL. We are not trying twelve separate acts.

The COURT. The question was giving aid and comfort to the enemy. This man was giving aid and comfort. Is giving aid or comfort——

Mr. BERTRAM. You do not require specific intent to commit treason in that explanation up there.

The COURT. Oh, I think you do. I said, "Is an essential element." I am content with it. What about 54?

Mr. BERTRAM. That is one I think is particularly bad, if
1263 the Court please. It excludes the principal theory of the defense, the giving of aid to his son as a son.

The COURT. You have a theory that I do not think is tenable at all.

Mr. BERTRAM. Then it winds up with the statement, "the fact his motive may not have been to aid the enemy is no defense." I think that is a very improper statement.

Mr. WARNHOLTZ. I think it is inconsistent, if the Court please, with some of the instructions we have had heretofore. This one is really bad in the light it nullifies some of the instructions based on father and son.

The COURT. It does not say that he did it to aid the enemy. He said that he did it to help his son.

Mr. BERTRAM. It makes the outright statement, "the fact that his motive may not have been to aid the enemy is no defense."

Certainly that is a defense, that certainly is a defense that he had no motive to aid the enemy.

Mr. WARNHOLTZ. The alternative would be he wanted to aid his son as a son. That, apart from the preceding instruction, is a defense.

1264 The COURT. Well, suppose a citizen of the United States has a son that goes out of the country and comes back, going to aid Germany in this case, and says, "I am going to buy some dynamite. I am going to blow up a bridge."

The father says: "Well, I do not want to aid Germany. I do not want to hurt the United States, but you are my son; I want you to get along in the world. You have chosen to cast your lot with Germany. I want to see you succeed. While I do not want to hurt the United States—I do not want to aid Germany—I do want to help you succeed, son; I will get that dynamite for you." What is that? You tell me.

Mr. WARNHOLTZ. He got the dynamite, your Honor, for the purpose of aiding the enemy, because he could not aid his son without aiding the enemy. There was no difference.

The COURT. He buys a car for him under the same circumstances.

Mr. WARNHOLTZ. He buys an automobile for the boy, and what is the difference if he bought an automobile?

The COURT. The same thing. He bought dynamite to blow the bridge up and he buys the car to take him down to blow it; what is the difference?

Mr. WARNHOLTZ. We are saying there is no such motive.

1265 If he buys the car so that he can carry dynamite with it, then there is no difference.

The COURT. Are you content with this?

Mr. HURLEY. Yes, we are.

The COURT. Let us go to 55.

Mr. BERTRAM. That is one instruction your Honor, that really does away with the entire father and son theory.

The COURT. You carry that father and son theory further than I think it should go in treason.

Mr. BERTRAM. May I call your Honor's attention to your Honor's actual words, where you tell the jury that the intent of the defendant does not make any difference, that it is no defense as you say here, and the fact that his motive may not have been to aid the enemy is no defense. I think that is extremely prejudicial.

Mr. WARNHOLTZ. That is 54—the difference between motive and intent?

Mr. WOLL. There is a lot of difference.

Mr. WARNHOLTZ. Not in this case. It is the same thing.

The COURT. No. I am content with this. What about 55?

1266 Mr. BERTRAM. That same error I think goes all through the rest of the paragraph, if the Court please. You have repeated it again.

The COURT. I have passed that before. We have to get on. What about 55?

Mr. BERTRAM. What about 55?

Mr. WARNHOLTZ. We have the same objection as to 54.

Mr. BERTRAM. On paragraph 55 it says it is right for the jury to infer treasonable intent but it omits that safeguard and protection in favor of the innocence of the defendant.

The COURT. I have covered that and I have thrown all the safeguards around him.

Mr. BERTRAM. And all the objections that we stated to paragraph 54. We want to renew those now because I thought they also apply to 55.

The COURT. How about 56?

Mr. BERTRAM. 56. All of the same objections apply to 56, because it tells the jury that circumstantial evidence may prove these things.

The COURT. Prove what?

Mr. BERTRAM. That the motives and intentions of the defendant are purposeless or not of any importance, that circum-

1267 stantial evidence may be used to prove any fact, including those facts.

The COURT. All right, we will go on to 57.

Mr. BERTRAM. 57 I think is very prejudicial to the defendant because it informs the jury that they may infer from words and conduct as much as six or seven years prior as overt acts.

The COURT. All right.

Mr. BERTRAM. Treasonable intent.

The COURT. Overruled. 58.

Mr. BERTRAM. I think 58 is highly prejudicial. It carries forward the other paragraph, 57, and particularly we object to the language: "Such statements of the defendant, if you believe they were made——"

The COURT. What do you want me to do? Do you want me to take that out?

Mr. BERTRAM. I think it should go out; yes.

The COURT. You want 58 out?

Mr. BERTRAM. I would like to eliminate the last part of the last sentence "but those statements, if you believe any were made, may be borne in mind by you in determining what is intent—" I do not object to what precedes that.

The COURT. Oh, well; no. That would not be a fair statement. What about 59?

1268 Mr. BERTRAM. With respect to 59, some of these alleged

statements I understand were as remote as six or seven years and they are used to prove overt acts. We do not believe that should be allowed.

The COURT. Do you want me to strike that out; number 59?

Mr. BERTRAM. I think it should be stricken, your Honor; the entire 59.

The COURT. Yes. Do you want that all stricken out?

Mr. BERTRAM. I would like to have 58 and 59 both entirely stricken out, if that is the Court's suggestion.

We do want the Court to give the instruction which we have submitted upon the lawfulness of persons to express opinions.

The COURT. No. I think 58 and 59 are fair instructions. I do not think it would be fair to the defendant to strike all of them. I do not think it would be fair to your client to strike either 58 or 59. The same is true of 60.

Mr. BERTRAM. We would want the Court to give the instructions that we submitted.

The COURT. We will go on. What about 60?

1269 Mr. BERTRAM. The words in the fifth line, "in committing, if he did commit", I think it should state "which he is alleged to have".

The COURT. Anything else?

Mr. BERTRAM. It should say "at the time he is alleged to have committed", instead of "in committing", instead of "in comitting"—a state of mind at the time he is alleged to have committed any of these.

The COURT. It says "if he did commit".

Mr. BERTRAM. I do not know if that is the same meaning or not.

The COURT. Anything else?

Mr. WOLL. We gave you a different instruction later on 61, if your Honor please.

The COURT. You did give me one last night, did you not?

Mr. WOLL. Yes, sir.

Mr. HURLEY. That is in place of 61.

The COURT. Have you made any suggestion with reference to 60?

Mr. HURLEY. No; it may be the same as far as we are concerned.

Mr. LINN. 60 is all right, your Honor.

Mr. BERTRAM. 60 won't go to the jury?

1270 The COURT. What do you mean, this is submitted in place of 61?

Mr. WOLL. Yes, your Honor.

The COURT. What is wrong with 61?

Mr. WOLL. Just a moment, let me read 61.

The COURT. Yes.

Mr. WOLL. We thought we may have inadvertently left out

some testimony along the line. That has been covered and we submit the instruction which would be more embracive of what has been testified and which should be narrowed.

In other words, you tried to limit the government more in the second one. We may not have at all done so, but that was our thought.

The COURT. You have a copy of that?

Mr. BERTRAM. No.

The COURT. They gave a copy to you last night.

Mr. BERTRAM. I do not know if I can find it, your Honor.

The COURT. This will be instruction 61. This is government's instruction 61.

1270-A "You are further instructed that the testimony of Ernest Peter Burger and the testimony of other witnesses, if any, concerning alleged events, which may have taken place in Germany and France at the time of Herbert Haupt's alleged stay in those countries, and the testimony if any of any witness concerning alleged events in Florida, and all exhibits in evidence which may have been identified by any witness who may have testified to any such events, and all testimony, if any, of witnesses concerning alleged acts of Herbert Haupt and alleged utterances and statements purportedly made by him, both prior to and during his stay in Chicago in 1942, and out of the presence of this defendant, and all articles purportedly taken from the person of Herbert Haupt while in Chicago in June 1942 and admitted in evidence, have been admitted for the sole and limited purpose of determining whether the said Herbert Haupt was or was not an agent of the Government of the German Reich and an enemy of the United States as charged in the indictment, and you are to consider this evidence solely on this question."

1271 Mr. BERTRAM. I do not see any objection.

Mr. WOLL. That is 61.

Mr. FINN. As this is a limiting instruction, if you have any objection to it I wish you would state what it is so that we can include any element you desire to have put into it at this time. It is an instruction which favors your client.

The COURT. Anything else you want in it?

Mr. BERTRAM. I have not got it. I cannot suggest anything further.

The COURT. 62.

Mr. BERTRAM. In the parenthetical part, "if you find that he was an enemy agent and that he did come to this country as an German Agent—"it should be qualified by a statement expressing the thought "and that he continued acting as such."

The COURT. There is not a scintilla of evidence in this case as far as I see that he changed his character after he came here.

Mr. BERTRAM. Nevertheless, it must be proved by the government, that at the time of the overt act that he was so engaged and it does not limit it to that time; it should say "if you find that he was an enemy agent" during the period from and
1272 to or acting as an enemy agent during the period from and to.

Mr. WOLL. If you want it "came to this country and was here as a German agent as the indictment alleges"——

Mr. BERTRAM. "If you find that he was acting as an enemy agent during the period from June 17th."

Mr. WOLL. Let us have again "came to this country and was here as a German agent."

Mr. WARNHOLTZ. That is your suggestion, Mr. Woll; not ours.

Mr. BERTRAM. "If you find that he is acting as an enemy agent during the period from June"——

Mr. WOLL. You have said that so many times, if your Honor please, if he was acting as a German agent. Evidently the purpose of that is to get the jury to believe you have in your mind some question whether or not he was acting as an agent.

The COURT. I am not fixing any date on that agent's part. What about 63?

Mr. BERTRAM. Can you not using the wording "If you find that he was an agent"?

The COURT. No, no. I am just going to let it as it is.

Mr. BERTRAM. According to the time of the knowledge,
1273 your Honor, that he was then an enemy, I think that is a reasonable request.

The COURT. No. I think that is all right.

Mr. BERTRAM. You don't need to put it if you find——

Mr. WOLL. That is in the sentence preceding. I am giving you that.

Mr. BERTRAM. The parenthetical clause, "if you find that he was an enemy agent."

The COURT. I do not think that is fair, if you want my honest conviction about that, trying to get me to say something in there and there is not a scintilla or shred of evidence in the record.

Mr. BERTRAM. I think there is.

Mr. HUDLEY. Nothing but the statement of counsel.

Mr. BERTRAM. He violated orders. The evidence is he violated orders in going to visit his parents.

The COURT. Not a scintilla of evidence that he ceased to be what he started out to be.

Mr. BERTRAM. The government's own witness stated that.

The COURT. What about 63?

Mr. BERTRAM. I have no comment to make there. 64, whether the indictment goes to the jury——

The COURT. The indictment always goes to the jury.

1274 Mr. BERTRAM. When a large number of overt acts have been withdrawn?

The COURT. But not entirely withdrawn, only withdrawn as to certain overt acts.

Mr. WOLL. You have told them which were withdrawn.

The COURT. I think I will put in a sheet of paper to indicate——

Mr. WOLL. Pardon me?

The COURT. I think I will put in a sheet of paper to indicate which ones, instead of saying 10 to 17 inclusive.

Mr. WARNHOLTZ. There is one instruction we have passed there which we would like taken out. That refers to "there shall be no presumption of any kind arising from the fact that the defendant did not take the witness stand." I should like to have it stricken. I believe that is the right of the defendant to have it stricken.

Mr. WOLL. If you do not want to make any objection——

Mr. BERTRAM. We might look at it in the paragraph.

Mr. WARNHOLTZ. We want it to be in, in the exact wording we suggest, or we do not want it.

Mr. WOLL. You tendered an instruction?

Mr. BERTRAM. We tendered an instruction.

Mr. WOLL. Shall we take out the tendered instruction

1275 16 they tell me it is. What is the objection to that?

The COURT. He wants it taken out.

Mr. BERTRAM. And in place give the instruction that we tendered, in the language that it was tendered.

The COURT. I have that in here. You do not want to give that?

Mr. BERTRAM. This is the way we have tendered the instruction on that point: "The fact that the defendant did not testify in this case must have no influence whatsoever upon you in arriving at your verdict."

Mr. FINN. What is the difference between that and the one "not take into consideration?"

Mr. BERTRAM. We could eliminate the whole paragraph 16 and in place thereof merely say "The fact that the defendant did not testify in this case must have no influence upon you whatsoever in arriving at your verdict."

Mr. WOLL. I think it should be pointed out that he has that right under the law.

Mr. WARNHOLTZ. It is a right that he has not taken. If ours was taken, the one we offered—if that is rejected, then we rather have none.

The COURT. Which is yours?

1276 Mr. BERTRAM. It is the fifth one if you still have the order, the fifth instruction. It is a very short one.

Mr. WARNHOLTZ. We suggest 16 be stricken and we also want to suggest that in place thereof, the one we offered in place thereof be taken out. We withdraw our number 5.

The COURT. You withdraw your 5?

Mr. WARNHOLTZ. And 16 be stricken out.

Mr. WOLL. I think your Honor should instruct on that very definitely.

Mr. WARNHOLTZ. We have a right, the government has no right, is my understanding.

Mr. WOLL. What do you mean you have a right and we have no right?

Mr. WARNHOLTZ. They have no right to an instruction on that point while the defense has.

The COURT. I am striking 16.

Mr. WOLL. I would like if you could give that a little consideration for this reason: How do we know that the jury may not be of the impression that the government has a right to call the defendant to testify and that the government is not giving him his opportunity?

1277 The COURT. Let me ask you, gentlemen, do you feel you have a right to comment on his not testifying?

Mr. WARNHOLTZ. Do you mean in the argument?

The COURT. Yes.

Mr. WARNHOLTZ. No; not if that instruction is out. We shall make no comment about it.

Mr. WOLL. I did have a situation arise where after the case went to the jury the jury returned a not guilty verdict and the reason they returned a not guilty verdict was they thought we prevented the defendant from taking the stand. I do not want that question to arise.

The COURT. I do not make the law.

Mr. WOLL. I think you can give the instruction. That is perfectly proper and legal.

The COURT. The defendant has withdrawn his request for number 5 which is: "The fact that the defendant did not testify in this case must have no influence whatsoever upon you in arriving at your verdict."

They ask the withdrawal of number 16. It will be withdrawn. I had intended to add to 15, but I think we had better make it 16, a paragraph saying that instructions had been numbered for the convenience of the court and counsel, but the numbers do not

1278 in any way limit or change the instructions, that the instructions shall be considered as one whole.

Mr. BERTRAM. "For the convenience of court and counsel"?

The COURT. Yes.

Mr. FINN. There is only one point that concerns me in con-

nection with that, your Honor, on the withdrawal of this instruction and that is this: There are a number of cases in which there have been dealth penalties and the lower courts have been severely criticised by the upper courts for not giving the instructions in that same character with reference to the failure of the defendant to take the stand, things of that fundamental nature, even though no requests was made for such an instruction.

The Courts have said that the lower courts should have given the instruction regardless of any request which may have been made; such fundamental things as that.

Mr. WOLL. Perhaps, if your Honor please, we can check some law in that regard and if we find anything we could submit it. Even though I do not believe I am in error about that, I would like to check it.

Mr. WARNHOLTZ. The record is here and showed that we agreed upon it, and the record will be open.

1279 The COURT. The chances are about half and half that when the case gets to another court, other counsel may be in it. Maybe I had better give 5: "The fact the defendant did not take the stand in this case must have no influence whatsoever upon you in arriving at your verdict."

Mr. WOLL. Do you want to hold it, Judge? We can get some cases. You will not instruct the jury until late today. It will not take over a half an hour.

The COURT. How about 5.

Mr. WARNHOLTZ. We withdraw it.

The COURT. You do not want it?

Mr. WARNHOLTZ. That is right; we withdraw it.

Mr. BERTRAM. Even though I am not familiar in that connection, I am familiar with cases that say it was error for the District Attorney or for the States Attorney or for anyone else to comment, other than the defendant himself. I think the defendant may request such instruction, then it may be given, but if we do not request the instruction——

Mr. WOLL. Is it your intention to comment on the instructions in your comment before the jury?

Mr. WARNHOLTZ. I think the situation is serious.

Mr. WOLL. We do not want error.

1280 Mr. WARNHOLTZ. We will look it up, if you wish, but I am quite sure you will find that no one has that right except the defendant, and therefore I withdraw the instruction I asked.

Mr. WOLL. The whole thing is contradictory. This man has been given all of his rights.

Mr WARNHOLTZ. I have read a lot of the last criminal cases, some twenty-five years old.

Mr. WOLL. Do you have any cases on that point?

The COURT. As a matter of fact I have given this instruction. I believe just the way it is in here and it was assigned as error in the Circuit Court of Appeals but it was held not error, but that is the way it was written, number 16 was so written, just exactly that instruction. The man got a substantial sentence, too; a five-year sentence.

Mr. WARNHOLTZ. Was the question in that case whether or not that instruction was correct?

The COURT. No. If any comment is made upon him not taking the witness stand and if they offer that instruction I am going to put it in.

Mr. BERTRAM. We object to 16.

The COURT. Well it is out. You withdraw your number 5?

1281 Mr. WARNHOLTZ. That is correct, your Honor.

The COURT. If you comment on his not taking the witness stand—I hope you won't complicate the record.

Mr. WARNHOLTZ. I have stated I shall not, and I do not think Mr. Bertram will.

Mr. BERTRAM. No; I do not want to unless Mr. Woll comments.

Mr. WARNHOLTZ. That would be error.

1282 (The several suggestions for the instructions, the discussion concerning which was had in chambers and which said suggestions were consecutively numbered from 1 to 65, all numbered inclusive, and during the course of said discussion said suggestion originally numbered 51 was renumbered 48; said suggestion originally numbered 48 was renumbered 49; said suggestion originally numbered 49 was renumbered 50; said suggestion originally numbered 50 was renumbered 51; which said original suggestions are in words and figures as follows, to wit:)

1283 (The following is a preliminary draft of the Court's instructions, which was furnished to both counsel and which furnished the basis of the foregoing discussions.)

Charge to the Jury

Ladies and Gentlemen of the Jury:

1. It is the duty of the court to deliver to you instructions for your guidance in the consideration of the evidence and in your deliberations upon this case.

2. The instructions which the court will give you, insofar as they pertain to the principles of law applicable to the case, must be accepted by you as a binding control and guide in your consideration of the evidence and in your deliberations.

3. The responsibility rests upon you to determine the facts

of this case, under the law as the court may give it to you, uninfluenced by any expression of opinion that the court has made or may hereafter make upon matters of fact. The court has not intended at any time during the trial of this case, and does not intend at any time, to express any opinion on any matter of fact, and if the court has expressed or does express any opinion on any matter of fact you are at liberty to disregard such opinion,
1284 and it is your duty to disregard it, if it is different from your own opinion.

4. Your verdict in this case must be reached from a consideration of all the evidence in the case, but if any evidence was admitted and was later stricken out, you must wholly disregard such evidence as was stricken out.

5. During the trial of a law suit it often becomes the duty of counsel for the parties to object to questions, or to evidence; and I instruct you that you shall not take into consideration against such party either such objections or the number of them, nor permit yourselves to be in any way influenced by such objections against the parties.

6. This is a criminal case, and the law in such cases is that a defendant comes into court presumed to be innocent, and that presumption protects him until such time, if such time shall come, when the jury shall believe from the evidence in the case, beyond a reasonable doubt, that the defendant is guilty as charged in the indictment.

7. The guilt of an accused is not to be inferred because
1285 the facts proven are consistent with his guilt, but, on the contrary, before there can be a verdict of guilty you must believe from all the evidence, and beyond a reasonable doubt, that the facts proven are inconsistent with his innocence. If two conclusions can reasonably be drawn from the evidence, one of innocence and one of guilt, you should adopt the former.

8. The defendant on trial has pleaded not guilty. This puts the burden of proving the charges in the indictment upon the Government, and you cannot find the defendant guilty unless, from all the evidence, you believe him guilty of the offense charged in the indictment beyond a reasonable doubt.

9. A reasonable doubt is what the term implies—a doubt founded on reason. It does not mean every conceivable kind of doubt. It does not mean a doubt that may be purely imaginary or fanciful, or one that is merely captious or speculative. It means, simply, an honest doubt that appeals to reason and is founded upon reason. If, after considering all the evidence in the case, you have such a doubt in your mind as would cause you, or any other reasonably prudent person, to pause or hesi-
1286 tate before acting in a grave transaction of your own life,

then you have such a doubt as the law contemplates as a reasonable doubt.

10. You are the sole judges of the credibility, and the weight which is to be given to the testimony, of the witnesses who have testified upon this trial. In weighing the testimony of each witness you should carefully scrutinize the same, consider all the circumstances under which the witness testifies; his demeanor on the stand; the relation which he bears to the Government or the defendant; the manner in which he might be affected by the verdict; the extent to which he is corroborated or contradicted by other credible evidence, and, in short, any circumstances that tend to throw light upon his credibility. And, applying these tests which I have just stated, it is for you to determine the weight which is to be given to the testimony of each witness.

11. If you believe from the evidence that any witness in this case has knowingly and wilfully testified falsely on this trial to any matter material to the issues in this case, as I shall
1287 define them to you in these instructions, you are at liberty to disregard the entire testimony of such witness, except insofar as it has been corroborated, if you find it has been corroborated, by other credible evidence or by facts and circumstances proven on the trial.

12. You should not allow either sympathy for the defendant or prejudice against him to influence your deliberations. You should not be influenced by anything other than the law and the evidence in the case. You must also disregard anything that you may have heard from others than witnesses or read in the newspapers concerning the case.

13. Certain witnesses who have testified in this proceeding have admitted that they have been convicted of felonies. You have heard their testimony and observed them while testifying. The fact that a witness has been convicted of a felony does not mean that he cannot tell the truth. You should weigh the testimony of such a witness by the same rules that you would weigh the testimony of any other witness. But the fact that a wit-
1288 ness has been convicted of a felony may be considered by you in determining the credibility of such a witness.

14. The fact that an indictment has been returned is not evidence; nor is the indictment evidence and neither the indictment nor the return thereof should be considered by you as any evidence of the guilt of the defendant. Neither should the indictment be treated by you as raising any kind of presumption or creating any kind of prejudice against the defendant. The indictment is simply the form or manner prescribed by law for preferring a charge against an individual, and must be regarded in that light, and in no other light.

15. You must consider each of the statements which I make to you not merely by itself, but as related to all other points covered by the charge. In other words, you must consider my charge as a whole.

16. You are not to take into consideration, as against the defendant the fact that he did not testify. The law gives to a defendant an absolute privilege to testify or not to testify, as he deems best. If he does go on the witness stand and testify,
1289 then he is like any other witness. If he does not testify, that is not in any sense to be taken against him. He is exercising only the absolute right that is given him by the law. What I mean to say is, that you must give full effect to the provision of the law that the fact that a defendant does not testify shall not create any presumption of guilt against him, and must not be taken into consideration by you against him.

17. Preliminary to your being sworn to act as jurors in this case you were examined by counsel as to your competency and qualifications to act as jurors in this case. As part of such examination each of you answered all questions put to you by counsel for the prosecution and for the defendant. Your answers showed that you were competent and qualified to act as jurors and the parties to this case accepted you as jurors on their faith in the truth of your answers. The answers you then made to such questions in regard to your competency, qualifications, fairness, and lack of prejudice are as binding upon you now as they were then, and should so remain until you are finally discharged from further consideration in this case. It would be improper
1290 and unlawful for any of you to disregard the answers that rendered you competent jurors.

18. The defendant in this case, Hans Max Haupt, is charged by an indictment returned by a grand jury in this District on February 25, 1944, with the crime of treason.

19. The definition of Treason in the Constitution of the United States, as far as the definition is material here, is as follows: "Treason against the United States shall consist in adhering to their enemies, giving them aid and comfort."

20. The definition of treason in the statutes of the United States, so far as the definition is material here, is as follows: "Whoever, owing allegiance to the United States adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason."

21. The indictment in this case alleges that Hans Max Haupt, at Chicago, in the Eastern Division of the Northern District
1291 of Illinois, continuously and at all times from June 17, 1942, to and including July 17, 1942, being a person owing allegiance to the United States—in violation of said duty of allegiance,

did unlawfully, feloniously, maliciously, intentionally, traitorously, and treasonably adhere to the enemies of the United States, that is, to the Government of the German Reich, its counsellors, armies, navies, agents, representatives, and subjects, with which the United States, at all times since December 11, 1941, has been at war, and did give to said enemies aid and comfort.

22. The indictment further alleges that Hans Max Haupt has been a citizen of the United States since 1930, and a resident thereof since 1923.

23. The indictment further charges that one Herbert Haupt, an agent and representative of the German Reich, came into the United States on or about June 17, 1942, and during the period of time above mentioned served the German Reich as a secret agent, saboteur, and spy, in carrying on its war with the United States, which service to the German Reich included the destruction of certain war materials, premises, and utilities of the United
1292 States, the disbursement of money, received from the German Reich in connection with the procurement, manufacture, and use of explosive substances and sabotage devices for and in the destruction of the war material, premises, and utilities of the United States, and the recruiting and hiring of persons to engage in unlawful and hostile enterprises consisting in the use of said explosives and sabotage devices to destroy the war materials, premises, and utilities of the United States.

24. The indictment further charges that the service of Herbert Haupt also involves the securing of information, and the employment of other persons so to do, concerning the national defense of the United States and the mental attitude of its citizens toward the war and the German Reich, and transmitting such information to the German Reich to assist it in carrying on its war against the United States.

25. The indictment further alleges that said service of Herbert Haupt also involved the making and conveying of false statements and reports within the United States, and the employment of other persons so to do, with intent to interfere with the operation and success of the military and naval forces of the
1293 United States, to the advantages of the German Reich. And said service of Herbert Haupt also involved his remaining within the United States for further orders from the German Reich pertaining to said service.

26. The indictment charges that the adherence of the defendant Hans Max Haupt, to the German Reich, its counselors, armies, navies, agents, representatives, and subjects, and said giving of aid and comfort by him consisted in his receiving, harboring, relieving, and assisting Herbert Haupt by automobile and in his furnishing hospitality to Herbert Haupt from June 17, 1942, to

July 17, 1942, in his aiding, abetting, meeting with, assisting, counseling and advising Herbert Haupt concerning the service of said Herbert Haupt to the German Reich; in his countenancing said service; in his carrying out requests and instructions of said Herbert Haupt in connection with said service; in his purchasing an automobile for said Herbert Haupt; in his attempting to procure employment for said Herbert Haupt; in his giving false information regarding and concealing the identity of Herbert Haupt, as a representative of the German Reich and the mission of Herbert Haupt in the United States; in his receiving,
1294 holding, possessing, safeguarding, and concealing the property and funds of said Herbert Haupt, and in misrepresenting and concealing the ownership of said property and funds, and in his maintaining, harboring, feeding and supporting said Herbert Haupt throughout said period of time.

27. It is further alleged that the defendant, Hans Max Haupt, when so adhering and giving aid and comfort to the German Reich, its counselors, armies, navies, agents, representative, and subjects, well knew all the matters heretofore set forth in this indictment, and well knew the character of said service of Herbert Haupt to the German Reich, and intended to and did adhere to said enemies and gave them aid and comfort.

28. It is further alleged in the indictment that the defendant, in the prosecution, performance, and execution of said treason, and with the intention of adhering to said enemies and giving them aid and comfort did do, perform, and commit certain overt and manifest acts. (The indictment then enumerates certain alleged overt acts.)

29. Every citizen of the United States, whether by birth
1295 or by naturalization, as a matter of law owes a duty of allegiance to the United States and continues to owe this duty of allegiance at all times, though he may have been born in another country with which this country is at war.

30. It has been proved that the defendant, Hans Max Haupt, is and since 1930 has been a naturalized citizen of the United States, and, accordingly, he was at the times mentioned in the indictment, a person owing allegiance to the United States.

31. It has also been proved, that, at the times mentioned in the indictment, there existed a state of war between the United States and the German Reich, and, therefore, the German Reich, the subjects, members of the military and naval forces of the German Reich, and all persons engaged by or working for that government as agents, spies, or saboteurs to assist that government in the prosecution of its war or to hamper the United States in the prosecution of our war against the German Reich were enemies of the United States.

32. Although not explicitly set forth in either the con-
1296 stitutional or statutory provisions, an intent to give aid and comfort to the enemy is an essential element of the crime of treason. Without an intent to give aid and comfort to the enemy, there is no treason.

33. When a state of war exists, any act done deliberately and intentionally and with treasonable intent as hereinbefore defined by one owing allegiance to the United States which, by fair construction, is directed toward the furtherance of the hostile designs of the enemies of the United States and gives them aid and comfort (or if that is the natural effect of the act), is treasonable in its character.

34. The words in the United States statute "adheres to their enemies, giving them aid and comfort," and words of similar import in the Constitution mean in general any intentional act done with treasonable intent as heretofore defined by one owing allegiance to the United States which clearly indicates a want of loyalty to the United States and a sympathy with its enemies and which, by fair construction, is directly and intentionally done in furtherance of the hostile designs of the enemy, or to
1297 strengthen the enemy, or weaken the power of the United States to resist or attack the enemy.

35. Regardless of any blood relationship which may have existed between Herbert Haupt and Hans Max Haupt, if you find that the natural effect or consequence of any act or acts performed by Hans Max Haupt was to give aid and comfort to Herbert Haupt in his capacity as an enemy agent, and that such act or acts were performed intentionally with knowledge of the fact that he was an enemy agent and with treasonable intent as hereinbefore defined then such act or acts were treasonable in character.

36. Applying these general principles to this case, if you find from the evidence beyond a reasonable doubt that Herbert Haupt was an agent of the government of the German Reich, or an enemy saboteur, and that he was engaged with or working for the government of the German Reich to assist that government in the prosecution of its war against the United States, or to hamper the United States in the prosecution of its war against Germany, and that the defendant knew that Herbert Haupt was an enemy agent or saboteur as aforesaid, and with such knowledge
1298 adhered to said Herbert Haupt as an enemy agent and with treasonable intent as hereinbefore defined gave him aid and comfort as such enemy as alleged in the indictment, then you may find that such defendant intended to adhere to the enemies of the United States and give aid and comfort to them.

37. If you are not satisfied, beyond a reasonable doubt, that the defendant's intention and purpose in acting as he did was

evil, that is, if you are not satisfied beyond a reasonable doubt that the defendant intended to aid and comfort the enemies of the United States the defendant must be found not guilty. If you believe the defendant's intention in doing what he did during the period from June 17, 1942 to and including July 17, 1942, was not in any way to injure the United States, but merely to assist his son, Herbert Haupt, as an individual, as distinguished from assisting him in his purposes, if such existed, of aiding the German Reich, or of injuring the United States, the defendant must be found not guilty.

38. A person cannot be convicted of treason merely for
1299 having the intention in his own mind to adhere to and give aid and comfort to the enemy. This intention must be manifest by what is termed an "overt act."

39. An "overt act" in criminal law, is an outward act done in pursuance and manifestation of a criminal intent or design, or more simply an act performed for the object of carrying out a criminal purpose.

40. An overt act has been defined by high authority as follows: "An overt act" is such an act as manifests a criminal intention and tends towards the accomplishment of the criminal object."

41. An overt act in itself may be a perfectly innocent act, standing by itself; it must be in some manner in furtherance of the crime.

42. The Constitution of the United States provides that: "No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act."

43. It is, therefore, necessary before the defendant can
1300 be found guilty of the crime charged against him in this case for the Government to establish beyond a reasonable doubt not only that the defendant intentionally, traitorously, and treasonably adhered to and gave aid and comfort to the enemy, as alleged in the indictment, but also that the said defendant in furtherance of said alleged adherence and the giving of aid and comfort, intentionally and treasonably performed at least one of the alleged overt acts submitted to your consideration by the court in these instructions and that the said alleged act has been established beyond a reasonable doubt by the testimony of two direct witnesses to the same act.

44. It is not necessary for the Government to establish by evidence all of the overt acts alleged in the indictment.

45. By the term "witnesses" used in this connection the Court does not mean persons who testify to admissions, if any, purportedly made by the defendant before the commencement of this trial. Neither admissions, if you believe any were made by the defendant, nor persons who took the stand to testify to

1301 such admissions, if any, are "witnesses" within the meaning of the foregoing provisions of the Constitution, and neither such admissions, if any, nor any persons testifying to them, if any, can be considered by the jury as a substitute of the Constitutional requirement. By the term "witnesses" is meant persons who testify to the commission of any of the alleged overt acts submitted to your consideration by the court rather than to any alleged admissions made about them.

46. One may not of course be convicted of treason upon evidence of an overt act, unless such act has been charged in the indictment.

47. The Court is submitting to your consideration as possible overt acts of treason the following alleged acts, charged in the indictment:

1302 48. Since the law requires that there shall be no conviction of treason unless there are two direct witnesses to the same overt act, all the other alleged overt acts charged in this indictment are hereby withdrawn from your consideration as overt acts of treason, for even if you believed beyond a reasonable doubt they were performed, they may not in themselves be made the basis of a conviction under the Constitution. However, if you believe beyond a reasonable doubt that the defendant did actually perform any of these other alleged overt acts which were not proven to the degree required by the Constitution, you may consider any such act in determining the question of the intent with which the defendant may have performed, if you find beyond a reasonable doubt he did perform any of the above alleged overt acts submitted to your consideration and not withdrawn.

49. If you believe from the evidence beyond a reasonable doubt that Herbert Haupt, as alleged in the indictment, was an enemy agent, spy, or saboteur and that he came into the United States on a mission for the German Reich and was acting as such

1303 agent, spy, or saboteur on such mission while here, and that the defendant, Hans Max Haupt, knowing that he was such agent, spy, or saboteur, unlawfully, feloniously, maliciously, intentionally, traitorously, and treasonably did adhere to and give aid and comfort to the said Herbert Haupt as an enemy, all as alleged in the indictment, and that in furtherance of or in carrying out said alleged adherence and giving of aid and comfort, Hans Max Haupt with treasonable intent performed any one of the above alleged overt acts submitted to your consideration and that two direct witnesses have testified to such act, then you may find the defendant guilty.

50. It is not necessary for the government to prove by two witnesses the performance of more than one of the submitted overt acts, providing, of course, the other elements of the alleged crime

are proven beyond a reasonable doubt as heretofore defined in these instructions.

51. By submitting the alleged overt acts above read to your consideration, however, this court does not mean to intimate or infer in any way, either its belief or disbelief that any al-
1304 leged overt acts of treason have been committed by this defendant, or that any overt acts of treason have been proven by the required two witnesses. Under the law, you are the sole judge of the facts and you alone can determine the factual issues including the question of whether this defendant committed any act or acts of treason and whether any such act was proven beyond a reasonable doubt by two direct witnesses to the same overt act.

52. The success or failure of any alleged mission upon which Herbert Haupt may have been engaged, if you believe beyond a reasonable doubt that he was engaged on a mission for the German government, is immaterial to the issues in this case and should be disregarded by you in your deliberations.

53. As I have heretofore stated to you the treasonable intent of the defendant is an essential element of the crime charged herein, and before you can find the defendant guilty you must find beyond a reasonable doubt, not only that such defendant adhered to the enemies of the United States, giving them aid and comfort, but also that at the time of such alleged adherence and giving
1305 of aid and comfort, the defendant intended to do so. This does not mean, however, that you must find that the defendant went through any specific mental process as a result of which he was conscious of the specific thought, "I am going to commit treason." This is not necessary, for every man in law is presumed to intend the natural and probable consequences of his acts if they are deliberately done. Anyone who is conscious of his acts and his surroundings and knowingly commits certain acts must be regarded as intending the natural and probable consequences of those acts. These observations are, of course, not intended to cast any inferences one way or another on the defendant's intent.

54. In this regard, motive should not be confused with intent. If a person knowingly and deliberately adheres to and gives aid and comfort to one whom he knows to be an enemy, then he must, in law, be taken to intend the natural and probable consequences of his own deliberate act, and the fact that his motive may not have been to aid the enemy is no defense. In other words, one cannot do an act which he knows will give aid and com-
1306 fort to a person he knows to be an enemy of the United States and then seek to disclaim criminal and treasonable intent by saying that his motive was not to aid the enemy. So if you believe from the evidence beyond a reasonable doubt that

the defendant as alleged in the indictment, performed one or more of the overt acts submitted to your consideration and that that act or those acts were of such a nature that the natural and probable consequence of their performance was to give aid and comfort to the enemy, and if you further believe that the defendant performed such act or acts deliberately with knowledge that Herbert Haupt was an enemy agent, if you find that he was, then you may find that the defendant had the criminal and treasonable intent, since he intended to do the act forbidden by the law. Under such circumstances, the fact that you may also believe that his motive in so doing, if you find that he did, was for example, to help his son, would not in such event, change the fact that he had a criminal and treasonable intent.

55. While it is necessary that the government prove treasonable intent beyond a reasonable doubt, it is not necessary to
1307 warrant a conviction under the Constitution, that this intent be so established by the testimony of two witnesses; neither is it necessary that this intent be so proven by direct evidence, as such intent may be so proven either by direct or circumstantial evidence. Criminal intent, being a mental state may not be susceptible of being proved by direct evidence, and, therefore, you may infer the nature of the defendant's intent from all the circumstances.

56. Circumstantial evidence is evidence which tends to prove a disputed fact by proof of other facts and circumstances, which have a legitimate tendency to lead the mind to the conclusion that the fact exists, which is sought to be established.

57. The defendant's own conduct and words, if any, may be the best index as to his intent and you may infer from the defendant's conduct, and words, if any are shown by the evidence, what his intent might have been.

58. There has been some testimony of certain statements purportedly made by the defendant prior to our declaration of
1308 war with Germany. Such statements of the defendant, if you believe they were made, are not grounds for charging the defendant with treason. The defendant, as well as others, had the right to his opinions and he had a right to express his opinions and to do anything lawful in keeping with those opinions and sympathies, but those statements, if you believe any were made, may be borne in mind by you in determining what his intent may have been after this country was at war with Germany, in committing, if you find beyond a reasonable doubt that he did so commit, any of the various overt acts charged in the indictment and submitted to your consideration by the court in these instructions.

59. The Court has permitted the Government to introduce into

evidence in this case certain alleged statements or utterances purportedly made by the defendant prior to the events forming the basis of the indictment in this case. Such statements or utterances, if you believe they were made by the defendant do not constitute evidence of the commission either of the treason alleged or of the commission of any alleged overt act, but may be
1309 considered by you, if you credit them, solely in determining the intent or state of mind of the defendant in performing, if you find he did perform, any alleged overt act or acts of treason charged in the indictment to have been committed by him, and submitted to your consideration in these instructions.

60. The court has also permitted the government to introduce evidence of certain alleged admissions made by the defendant after he was in custody. You are instructed that such evidence may be considered by you solely on the issue of the intent or state of mind of the defendant in committing, if he did commit, any of the overt acts alleged in the indictment and submitted to your consideration in these instructions. In other words, any witness who may have testified to such alleged admissions is not a "witness" within the meaning of the Constitutional requirement of "two witnesses to the same overt act."

61. The Court has permitted the government to introduce evidence of certain alleged acts of Herbert Haupt, and of certain alleged utterances and statements purportedly made by him, both prior to and during his alleged stay in Chicago in June
1310 1942, and out of the presence of this defendant. These alleged acts, utterances, and statements, attributed to Herbert Haupt, out of the defendant's presence, were admitted by the Court and are to be considered by you, if you desire to give them credit, for the sole and limited purpose of determining whether the said Herbert Haupt was or was not an agent of the Government of the German Reich and an enemy of the United States, as charged in the indictment. Of this character, to be considered by you, if at all solely on that issue, namely, whether Herbert Haupt was or was not an enemy agent, is the testimony of Ernest Peter Burger, and the testimony of the witnesses describing the events which purportedly took place in Germany, as well as those witnesses to the events purportedly taking place in Florida, and the testimony of the witness, Joseph William Haas, to conversations purportedly taking place in Chicago. Similarly, you are to consider the exhibits allegedly found in a cache in Florida, including the explosives, incendiary devices, and military caps, on that issue alone. These exhibits and this testimony were admitted for the limited purpose of establishing Herbert
1311 Haupt's alleged identity as a German agent and are not to be considered by you on any other issue in this case.

62. On the subject of the defendant's knowledge of the alleged enemy status of his son, it is necessary for the government to prove beyond a reasonable doubt that in adhering to and giving aid and comfort to the enemies of the United States, if you find that he did so adhere to them and give them aid and comfort, the defendant knew at the time that Herbert Haupt was an enemy agent, as alleged in the indictment. It is not necessary, however, for the government to prove that the defendant knew in detail all of the things which this alleged enemy intended to do (if you find that he was an enemy agent and that he did come to this country as a German agent as the indictment alleges). Nor is it necessary for the government to prove that the defendant knew all of the facts which the government may have offered in evidence to prove Herbert Haupt's alleged enemy status. It is only necessary for the government to prove beyond a reasonable doubt that the defendant knew that Herbert Haupt was a spy, saboteur, or enemy agent, if such were the fact.

1312 63. The question of the possible punishment of the defendant in the event of a conviction is not a matter for the jury to consider, and should not in any way enter into your deliberations. The duty of imposing sentence on a defendant rests solely upon the Court, who tries to perform it fairly and with due consideration for all the circumstances. The function of the jury is to weigh all the evidence and determine the guilt or innocence of the defendant, solely from that evidence.

64. You will take with you to your jury room the indictment and the exhibits which have been offered and received in evidence and which are proper to go to the jury room and which counsel will now assemble and hand to the Marshals in charge of the jury. If counsel have any differences of opinion as to which exhibit should go to the jury room they shall call such differences to the attention of the court at the conclusion of these instructions. If the court's attention is not then called to differences the court will assume that there are none. You will also take with you

1313 two forms of verdict. One form of verdict reads, "We, the jury, find the defendant Hans Max Haupt, not guilty as charged in the indictment." The other form of verdict reads, "We, the jury, find the defendant, Hans Max Haupt, guilty as charged in the indictment." Having arrived at a verdict, you will use the first form if you find the defendant not guilty, and the second form if you find the defendant guilty. All jurors must sign the verdict on which you agree, the foreman signing first and the other jurors following.

65. I suggest that before commencing your deliberations, you elect one of your number foreman to preside over your deliberations.

1314 (Prior to said discussion in chambers, as hereinbefore set forth, there has been submitted on behalf of the Government certain requests for the giving of instructions to the jury in the following form:)

1315 *Government's requested instructions*

The COURT. Ladies and Gentlemen of the Jury:

The defendant, Hans Max Haupt, has been indicted by the Grand Jury of this District for the offense of treason, in violation of Section 1, of our criminal code. Now in considering the case, it is necessary for you to keep in mind the elements of the crime of Treason, so I will read Section 1 to you. It reads as follows: "Treason. Whoever, owing allegiance to United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere is guilty of Treason."

There is a similar definition of Treason contained in the Constitution of the United States, which, however, adds certain indispensible requisites regarding the proof of Treason. The Constitution provides: "Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted
1316 of Treason unless on the testimony of two witnesses to the same overt act, or on confession in open court."

You are instructed that every citizen of the United States, whether by birth or by naturalization, as a matter of law owes a duty of allegiance to the United States and continues to owe this duty of allegiance at all times, though they may have been born in another country with which this country is at war.

The uncontradicted proof is that the defendant, Hans Max Haupt, foresworc allegiance to Germany, and became a citizen of the United States in 1930.

On the outbreak of war between two nations, the citizens and subjects of the respective belligerents are deemed by the law to be the enemies of each other. Hence upon the declaration of the present war now existing between the government of the German Reich and the government of the United States of America, all subjects of the government of the German Reich became "enemies" of the United States and have continued to remain such enemies down to the present time. Likewise, of course, all
1317 members of the military or naval forces of the government of the German Reich and all persons engaged by or working for that government as agents, saboteurs, or spies, were and are enemies of the United States.

When a state of war exists any act deliberately and intentionally done which, by fair construction, is directed in furtherance of

the hostile designs of the enemies of the United States and gives them aid and comfort (or if that is the natural effect of the act), is treasonable in its character.

The words in the statute and in the Constitution "adheres to the enemies, giving them aid and comfort," means in general any intentional act by one owing allegiance to the United States which clearly indicates a want of loyalty to the United States and a sympathy with its enemies and which, by fair construction, is directly and intentionally done in furtherance of the hostile designs of the enemy.

In this connection, I charge you that regardless of any blood relationship which may exist between an enemy agent or representative, and any party who may give him aid and comfort as such enemy, if you find that the natural effect or conse-
1318 quence of any act or acts performed by any person was to give aid and comfort to an enemy agent in his representative capacity, and that such act or acts are performed intentionally with knowledge of the fact that he is an enemy agent, then such act or acts are treasonable in character.

Applying these general abstract principles to this case, if you find from the evidence beyond a reasonable doubt that Herbert Haupt was an agent of the government of the German Reich, or an enemy saboteur, and that he was engaged with or working for the government of the German Reich to assist that government in the prosecution of its war against the United States, or to hamper the United States in the prosecution of its war against Germany, and that the defendant knew that he was an enemy agent or saboteur as aforesaid, and with such knowledge adhered to Herbert Haupt as an enemy agent and gave him aid and comfort as such enemy as alleged in the indictment, then you must find that such defendant intended to adhere to the enemies of the United States and give aid and comfort to them.

1319 The indictment in this case does not charge the defendant with levying war against the United States. It does charge that Herbert Haupt, the defendant's son, was a secret agent, spy, and saboteur for the government of the German Reich and that he came into this country for the purpose of destroying certain war materials, premises, and utilities, etc., and to perform other services in assisting the government of the German Reich in its war against the United States. The indictment further charges in substance that the defendant Hans Max Haupt, knowing that Herbert Haupt was an agent for Germany as aforesaid, "unlawfully, feloniously, maliciously, intentionally, traitoriously, and treasonably," adhered to and gave aid and comfort to the enemies of the United States and that this adherence and the giving of aid and comfort to the enemies consisted among other

things in the defendant's receiving, harboring, relieving, and assisting Herbert Haupt; in his furnishing hospitality to him; in his aiding, abetting, and assisting him; in purchasing an automobile for him; in attempting to procure employment for him; in giving false information regarding him, and concealing
1320 his identity as a German agent, in his receiving, holding, safeguarding, and concealing funds, and in misrepresenting the ownership of such funds, and in harboring him in his home. These acts are alleged to have been done with the intention of adhering to the enemies of the United States, giving them aid and comfort.

The indictment further alleges that in carrying out these alleged acts of adherence to the enemy, the defendant performed certain "overt acts," which are specified in the indictment.

An "overt act," in criminal law, is an outward act done in pursuance and manifestation of a criminal intent or design, or more simply an act performed for the object of carrying out a criminal purpose.

The indictment in this case charged the defendant with the commission of a number of alleged overt acts of treason. In this connection, you are instructed that the Constitutional requirements for the crime of treason include the following: "No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court."
1321 There has been no confession in open court by the defendant. It is, therefore, necessary before the defendant can be found guilty of this crime, for the Government to establish beyond a reasonable doubt not only that the defendant intentionally, traitorously, and treasonably adhered to and gave aid and comfort to the enemy, as alleged in the indictment, but also that the said defendant in furtherance of said alleged adherence and the giving of aid and comfort, intentionally and treasonably performed at least one of the alleged overt acts submitted to you by the court in these instructions and that the said alleged act has been established beyond a reasonable doubt by the testimony of two direct witnesses to that same act.

By the term "witnesses," in this regard, the Court does not mean persons who testify to admissions, if any, purportedly made by the defendant before the commencement of this trial. Neither admissions, if you believe any were made by the defendant, nor persons who took the stand to testify to such admissions, if any, are "witnesses" within the meaning of the Constitution, and
1322 neither such admission, if any, nor any persons testifying to them, if any, can be considered by the jury as a substitute for the Constitutional requirements. By the term "witnesses" is meant persons who testify to the commission of any of the

alleged overt acts submitted to you by the court rather than to any alleged admissions made about them.

The Court instructs the jury that it is submitting to you, as possible overt acts of treason, the following alleged acts, which I shall read to you:

The fact that an indictment has been returned is not evidence; nor is the indictment evidence. The indictment is not to be treated by you in any way as raising a presumption of guilt or creating any kind of prejudice against the defendant. The indictment is simply the form or manner prescribed by law for preferring a charge against an individual, and must be regarded in that light, and in no other light.

Since the law requires that there shall be no conviction of treason (in the absence of a confession in open court) unless there are two direct witnesses to the same overt act, all of the other
1323 alleged overt acts are hereby withdrawn from your consideration as overt acts of treason, for even if you believe beyond a reasonable doubt they were performed, they may not in themselves be made the basis of a conviction under the Constitution. However, if you believe beyond a reasonable doubt that the defendant did actually perform any of these other alleged overt acts which were not proven to the degree required by the Constitution, you may consider any such act in determining the question of the intent with which the defendant may have performed, if you find beyond a reasonable doubt he did perform, any of the above-alleged overt acts submitted to you and not withdrawn.

If you believe from the evidence beyond a reasonable doubt that Herbert Haupt, as alleged in the indictment, was an enemy agent, spy, or saboteur and that he came into the United States on a mission for the German Reich and was acting as such agent, spy, or saboteur on such mission while here, and that the defendant, Haus Max Haupt, knowing that he was such agent, spy, or saboteur, unlawfully, feloniously, maliciously, intentionally, traitorously, and treasonably did adhere to and give aid and com-
1324 fort to the said Herbert Haupt as an enemy, all as alleged in the indictment, and that in furtherance of or in carrying out said alleged adherence and giving of aid and comfort, Hans Max Haupt with treasonable intent performed any one of the above alleged overt acts submitted to you and that two direct witnesses have testified to such act, then you must find the defendant guilty.

It is not necessary for the government to prove by two witnesses the performance of more than one of the submitted overt acts, providing, of course, the other elements of the alleged crime are proven beyond a reasonable doubt as heretofore defined in these instructions.

By submitting the alleged overt acts above read to you, however, the court does not mean to intimidate or infer in any way, either its belief or disbelief that any alleged overt acts of treason have been committed by this defendant, or that any overt acts of treason have been proven by the required two witnesses. You under the law, are the sole judges of the facts and you alone can determine the factual issues including the question of
1325 whether this defendant committed any act or acts of treason and whether any such act was proven beyond a reasonable doubt by two direct witnesses to the same overt act.

The success or failure of any alleged mission upon which Herbert Haupt may have been engaged, if you believe beyond a reasonable doubt that he was engaged in a mission for the German government, is immaterial to the issues in this case and should be disregarded by you in your deliberations.

You are instructed that the treasonable intent of the defendant is an essential element of the crime charged herein, and before you can find the defendant guilty you must find beyond a reasonable doubt, not only that such defendant adhered to the enemies of the United States, giving them aid and comfort, but also that at the time of such alleged adherence and giving of aid and comfort, the defendant intended to do so. This does not mean, however, that you must find that the defendant went through any specific mental process as a result of which he was conscious of the specific thought "I am going to commit treason." This is not necessary for
1326 natural and probable consequences of his acts if they are deliberately done. Anyone who is conscious of his acts and his surroundings and knowingly commits certain acts must be regarded as intending the natural and probable consequences of these acts. These observations are, of course merely abstract and are not intended to cast any inferences one way or another on the defendant's intent.

In this regard, motive should not be confused with intent. If a person knowingly and deliberately adheres to and gives aid and comfort to one whom he knows to be an enemy, then he must, in law, be taken to intend the natural and probable consequences of his own deliberate act, and the fact that his motive might not have been to aid the enemy is no defense. In other words, one cannot do an act which he knows will give aid and comfort to a person he knows to be an enemy of the United States and then seek to disclaim criminal and treasonable intent by saying that one's motive was not to aid the enemy. So if you believe from the evidence beyond a reasonable doubt that the defendant as alleged in the indictment performed one or more of the overt acts sub-
1327 mitted to you, and that that act or those acts were of such

a nature that the natural and probable consequence of their performance was to give aid and comfort to the enemy, and if you further believe that the defendant performed such act or acts deliberately with knowledge that Herbert Haupt was an enemy agent, if you find that he was, then you must find that the defendant had the criminal and treasonable intent, since he intended to do the fact forbidden by the law. Under such circumstances, the fact that you may also believe that his motive in so doing, if you find that he did, was for example, to help his son, would not in such event, change the fact that he had a criminal and treasonable intent.

While it is necessary that the government prove treasonable intent beyond a reasonable doubt, it is not necessary to warrant a conviction under the Constitution, that this intent be so established by the testimony of two witnesses; neither is it necessary that this intent be so proven by direct evidence, as such intent may be so proven either by direct or circumstantial evidence.

Criminal intent, being a mental state may not be susceptible
1328 of being proved by direct evidence, and, therefore, you may infer the nature of the defendant's intent from all the circumstances.

Circumstantial evidence is evidence which tends to prove a disputed fact by proof of other facts and circumstances, which have a legitimate tendency to lead the mind to the conclusion that the fact exists, which is sought to be established.

The defendant's own conduct and words, if any, may be the best index as to his intent and you may infer from the defendant's conduct, and words, if any, are shown by the evidence, what his intent might have been.

There has been some testimony of certain statements purportedly made by the defendant prior to our declaration of war with Germany. In this regard, treason, of which the defendant is accused, can only be committed in time of war, so that such statements of the defendant, if you believe they were made, are not grounds for charging the defendant with treason. Prior to the entry into the war by the United States, the defendant, as well as others, had the right to his opinion as to where his sympathies would lie, and he had a right to express his
1329 opinions and to do anything lawful in keeping with these opinions and sympathies, but those statements, if you believe any were made, may be borne in mind by you in determining what his intent may have been after this country was at war with Germany, in committing, if you find beyond a reasonable doubt that he did so commit, any of the various overt acts charged in the indictment and submitted to you by the court in these instructions.

The Court further instructs you that the Court has permitted the Government to introduce into evidence in this case certain alleged statements or utterances purportedly made by the defendant prior to the events forming the basis of the indictment in this case. Such statements or utterances, if you believe they were made by the defendant do not constitute evidence of the commission either of the treason alleged or of the commission of any alleged overt act, but may be considered by you, if you credit them, solely in determining the intent or state of mind of the defendant in performing, if you find he did perform, any alleged overt act or acts of treason charged in the indictment to have been committed by him, and submitted to you in
1330 these instructions.

The court has also permitted the government to introduce evidence of certain alleged admissions made by this defendant after he was in custody. You are instructed that such evidence may be considered by you solely on the issue of the intent or state of mind of the defendant in committing, if he did so commit, any of the overt acts alleged in the indictment and submitted to you in these instructions. In other words, any witness who may have testified to such alleged admissions is not a "witness" within the meaning of the Constitutional requirement of "two witnesses to the same overt act."

The Court has permitted the government to introduce evidence of certain alleged acts of Herbert Haupt, and of certain alleged utterances and statements purportedly made by him, both prior to and during his alleged stay in Chicago in June 1942, and out of the presence of this defendant. These alleged acts, utterances, and statements attributed to Herbert Haupt, out of the defendant's presence, were admitted by the Court and are to be considered by you, if you desire to give them credit, for the
1331 sole and limited purpose of determining whether the said Herbert Haupt was or was not an agent of the Government of the German Reich and an enemy of the United States, as charged in the indictment. Of this character, to be considered by you, if at all, solely on that issue, namely, whether Herbert Haupt was or was not an enemy agent, is the testimony of Ernest Peter Burger, and the testimony of the witnesses describing the event which purportedly took place in Germany, as well as those witnesses to the events purportedly taking place in Florida, and the testimony of the witness Joseph William Haas to conversations purportedly taking place in Chicago. Similarly, you are to consider the exhibits allegedly found in a cache in Florida, such as explosives, incendiary devices, etc. on that issue alone. These exhibits and this testimony were admitted for the limited

purpose of establishing Herbert Haupt's alleged identity as a German agent and are not to be considered by you on any other issue in this case.

The Court instructs the jury that a reasonable doubt is what the term implies—a doubt founded on reason. It does not mean every conceivable kind of doubt. It does not mean a doubt
1332 that may be purely imaginary or fanciful, or one that is merely captious or speculative. It means, simply an honest doubt that appeals to reason and is founded upon reason. If, after considering all the evidence in the case, you have such a doubt in your mind as would cause you, or any other reasonably prudent person, to pause or hesitate before acting in a grave transaction of your own life, then you have such a doubt as the law contemplates as a reasonable doubt.

The defendant cannot, in a criminal case be compelled to take the witness stand and testify. He may do so or not as he chooses. In this case the defendant has elected to stand upon his Constitutional rights and has not chosen to become a witness. The failure of the defendant to take the witness stand in his own behalf, must not be considered by you in any way against him. He is exercising only the absolute right that is given by the law, and you must give full effect for the provision of the law that the fact that a defendant does not testify shall not create any presumption of guilt against him, and must not be taken into consideration by you against him.

The responsibility rests upon you to determine the facts
1333 of this case, under the law as the Court may give it to you, uninfluenced by any expression of opinion that the Court has made or may hereafter make upon matters of fact. The Court has not intended at any time during the trial of this case, and does not intend at any time to express any opinion on any matter of fact, and if the Court has expressed or does express any opinion on any matter of fact you are at liberty to disregard such opinion, and it is your duty to disregard it, if it is different from your own opinion.

This is a criminal case, and the law in such cases is, that a defendant comes into court presumed to be innocent, and that presumption protects him until such time, if such time shall come, when the jury shall believe from the evidence in the case, beyond a reasonable doubt, that the defendant is guilty as charged in the indictment or some count thereof.

The guilt of an accused is not to be inferred because the facts proven are consistent with his guilt, but, on the contrary, before there can be a verdict of guilty you must believe from all the evidence, and beyond a reasonable doubt, that the facts

1334 proven are inconsistent with his innocence. If two conclusions can reasonably be drawn from the evidence, one of innocence and one of guilt, you should adopt the former.

The defendant on trial has pleaded not guilty. The law does not require the defendant to prove his innocence. The burden of proving the charges in the indictment rests upon the Government, and you cannot find the defendant guilty unless, from all the evidence, you believe him guilty of the offense charged in this indictment beyond a reasonable doubt.

If you believe from the evidence that any witness in this case has knowingly and wilfully testified falsely on this trial to any matter material to the issues in this case, as I have defined them to you in these instructions, you are at liberty to disregard the entire testimony of such witnesses, except insofar as it has been corroborated, if you find it has been corroborated, by other credible evidence or by facts and circumstances proven on the trial.

1335 Your verdict in this case must be reached from a consideration of all the evidence in this case, but if any evidence was admitted and was later stricken out, you must wholly disregard such evidence as was stricken out.

During the trial of a lawsuit it often becomes the duty of counsel for the parties to object to questions, or to evidence, and I instruct you that you shall not take into consideration against such party either such objections or the number of them; nor permit yourselves to be in any way influenced, by such objections, against the parties.

You are the sole judges of the credibility and the weight which is to be given to the testimony of the witnesses who have testified upon this trial. In weighing the testimony of each witness you should carefully scrutinize the same; consider all the circumstances under which the witness testifies; his or her demeanor on the stand; the relation which he or she bears to the Government or the defendant; the manner in which he or she might be affected by the verdict; the extent to which he or she is corroborated

1336 or contradicted by other credible evidence, and in short, any circumstances that tend to throw light upon his credibility. And, applying these tests which I have just stated, it is for you to determine the weight which is to be given to the testimony of each witness.

You should not allow either sympathy for the defendant or prejudice against him to influence your deliberations. You should not be influenced by anything other than the law and the evidence in the case. You must also disregard anything that you may have heard from others or read in the newspapers concerning the case.

The question of the possible punishment of the defendant in the event of a conviction is not a matter for the jury to consider, and should not in any way enter into your deliberations. The duty of imposing sentence on a defendant rests solely, in the Federal Courts, upon the Court, who tries to exercise it fairly and with due consideration for all the circumstances. The function of the jury is to weigh all the evidence and determine the guilt or the innocence of the defendant, solely from that evidence.

1337 On the subject of the Defendant's knowledge of the alleged enemy status of his son, it is necessary for the government to prove beyond a reasonable doubt that in adhering to and giving aid and comfort to the enemies of the United States, if you find that he did so adhere to them and give them aid and comfort, the defendant knew at the time that Herbert Haupt was an enemy agent, as alleged in the indictment. It is not necessary, however, for the government to prove that the defendant knew in detail all of the things which this alleged enemy intended to do (if you find that he was an enemy agent and that he did come to this country as a German agent as the indictment alleges). Nor is it necessary for the government to prove that the defendant knew all of the facts which the government may have offered in evidence to prove Herbert Haupt's alleged enemy status. It is only necessary for the government to prove beyond a reasonable doubt that the defendant knew that Herbert Haupt was a spy, saboteur, or enemy agent, if such were the fact.

1338 (There were submitted on behalf of Defendant several suggested instructions said suggestions were designed D and numbered consecutively from 1 to 25, both numbers inclusive, which said suggestions are in the following words and figures, to wit:)

Defendant's requested instructions

D-1

The court instructs the jury that the Constitution of the United States provides that "No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court."

The court further instructs the jury that in this case there has been no confession in open court by the defendant.

The court further instructs the jury that the prosecution is required by the Constitution of the United States to prove the commission of treason by the testimony of two witnesses in open court to the same overt act of treason and that proof of an overt

1339 act of treason by only one witness is not sufficient to convict the defendant of treason under the indictment herein, as to such overt act.

The court further instructs you that the requirement of the testimony of two witnesses to the same overt act means the oral testimony of at least two witnesses in open court, who actually saw the commission of the particular overt act.

The requirement of the Constitution of the United States of the testimony of two witnesses to the same overt act cannot be varied, waived, or ignored in any manner in the consideration of this case.

D–2

An overt act must not only be proved beyond a reasonable doubt by two witnesses who saw the commission of that overt act, but it must also be proved, that such overt act was committed with an intent to commit treason.

Such overt act must be one of the overt acts enumerated as such in the indictment.

D–3

1340 The court instructs the jury that the defendant would not be guilty of treason where he intended merely to assist his son, Herbert, as an individual, and where he did not intend thereby to give aid and comfort to the enemies of the United States.

If you have a reasonable doubt as to what the defendant's intent was in that respect, then you must find the defendant not guilty.

D–4

Where the act of a defendant, which is alleged to constitute an overt act of treason, is of a private and personal nature not having a direct effect either to injure the United States or to give material aid to a country with which the United States is at war, then such act would not amount to treason.

D–5

The fact that the defendant did not testify in this case must have no influence whatsoever upon you in arriving at your verdict.

D–6

1341 The Court instructs the Jury that at the times mentioned in the indictment in this case, to wit, during the period from June 17, 1942 to July 17, 1942, there was, and still is, in full force and effect a certain Statute of the State of Illinois, which reads as follows: "Every person not standing in the relation of husband or wife, parent or child, brother or sister to the offender,

who knows the fact that a crime has been committed, and conceals it from the magistrate, or who harbors, conceals, maintains, or assists any principal felon, or any accessory before the fact, knowing him to be such, shall be deemed an accessory after the fact, and shall be punished by imprisonment in the penitentiary for a term of not less than one year and not exceeding two years, and fine not exceeding $500.00."

D–7

The Court instructs the Jury that the witnesses, John Majerczek, alias Stanley Norris, and Carl Hamby, are persons who have each been convicted of several felonious crimes.
1342 The Court further instructs the Jury that the testimony of a witness who has been convicted of a felony is to be considered by the Jury with extreme caution and with due regard for the fact that such witness has been so convicted, insofar as such fact may affect his credibility as a witness.

D–8

The Court instructs the jury that the witness Berger is a person who has been convicted of a felonious crime.

The Court further instructs the Jury that the testimony of a witness who has been convicted of a felony is to be considered by the Jury with caution and with due regard for the fact that such witness has been so convicted, insofar as such fact may affect his credibility as a witness.

D–9

The Court instructs the jury that all exhibits of equipment and physical objects, and of photographs of equipment and physical objects, which have been introduced in evidence by the Government's attorneys with respect to the activities of Herbert
1343 Haupt to show the status of said Herbert Haupt as an enemy of the United States, are to be considered by the Jury only for the purpose of determining the question of the enemy status of said Herbert Haupt at the times mentioned in the indictment, and said exhibits are not offered, or to be considered by the Jury, as evidence of any activities or acts on the part of the defendant, Hans Max Haupt.

D–10

The Court instructs the jury that witnesses testifying to oral or written statements made by the defendant before the commencement of this trial, are not witnesses within the meaning of

the constitutional provision which requires two witnesses to the same overt act for a conviction of treason.

The court further instructs the jury that neither oral nor written statements made by defendant before the commencement of this trial, which have been testified to by one or more witnesses, can be considered by the jury as a substitute for the requirement of the Constitution of the United States that "No person shall be convicted of Treason unless on the testimony of two witnesses to the same overt act, or on confession in open court."

1344 D-11

Conspiracy to commit treason does not constitute treason. Mere words or the forming of a plan or agreement to commit are not sufficient to constitute the commission of treason. There must not only be an intention to commit treason, but the intention must be carried out by the commission of the treasonable act which was intended by the accused person, otherwise such accused person is not guilty of treason.

D-12

If the motive for doing an act by a person accused of treason, is to give aid or assistance to an alien enemy in his individual and personal necessities and not to assist thereby such enemy in levying war against the United States, and there is no treasonable intention, then such accused person will not be guilty of treason.

D-13

The court charges you that the law presumes the defendant innocent until proven guilty beyond a reasonable doubt.

1345 That if you can reconcile the evidence before you upon any reasonable hypothesis consistent with the defendant's innocence, you should do so, and in that case find him not guilty. You are further instructed that you cannot find the defendant guilty unless, from all of the evidence, you believe him guilty beyond a reasonable doubt.

D-14

The court instructs the jury that if you believe from the evidence that any witness in this case has wilfully and knowingly testified falsely on this trial to any matter or thing material to the issues in this case, then you are at liberty to disregard the entire testimony of such witness except in so far, if at all, as it has been corroborated by other credible evidence or by facts and circumstances proved on this trial.

D-15

The jury are instructed further that the presumption of innocence is not a mere form, to be disregarded by the jury at pleasure, but it is an essential and substantial part of the law of the
1346 land, and binding upon the jury in this case; and it is the duty of the jury to give the defendant in this case the full benefit of that presumption.

D-16

The burden of proof never shifts from the prosecution to the defendant, but it is upon the prosecution throughout the case to establish every constituent element of the crime of treason beyond a reasonable doubt and by such proof as is required by the Constitution of the United States.

D-17

The court charges the jury that before they can convict the defendant, the evidence must be so strong as to convince each juror of his guilt beyond a reasonable doubt; and if, after considering all of the evidence, a single juror has a reasonable doubt of the defendant's guilt, arising out of any part of the evidence, then they cannot convict such defendant.

D-18

As a matter of law, if you believe from an examination
1347 of the evidence in certain of its aspects that the defendant is guilty, and if you further believe from an examination of other aspects of the evidence, that such defendant is not guilty, then you should adopt that view of the evidence which will lead to the acquittal of the defendant rather than that view which leads to his conviction, if that view of the evidence leading to acquittal is as reasonable as that which leads to conviction.

D-19

The Court instructs the jury that in treason there must be not only an act of adherence to the enemies of the United States giving them aid and comfort, but there must be an intention on the part of the accused to consciously adhere to the enemies of the United States and to give the enemies of the United States aid and comfort by the act in question. There must be proof beyond a reasonable doubt not only of the overt act charged, but of the treasonable intent of the accused person in the commission of that act.

D-20

1348 Treason is defined in the Constitution of the United States, which is the supreme law of our land.

The Constitution of the United States provides as follows: "Treason against the United States shall consist only in levying war against them, or in adhering to their Enemies, giving them aid and comfort. No persons shall be convicted of Treason unless on the Testimony of two witnesses to the same overt act, or on confession in open court."

The crime of treason, as so defined in the Constitution of the United States cannot be extended by any statute or legal interpretation beyond the limits of the definition stated in the Constitution.

Nor can the constitutional requirement as to the method of proof of the commission of treason be varied, changed or ignored.

D-21

The court instructs the jury that if you believe from the evidence in the case that the defendant gave food, shelter, or other personal assistance to Herbert Haupt during the period
1349 from June 17, 1942 to July 17, 1942, but that such food, shelter, and assistance was given to the said Herbert Haupt personally, as to a son, or friend, without any intention on the part of the defendant to aid the enemies of the United States in levying war against the United States, then the giving of such food, shelter and personal assistance to the said Herbert Haupt would not amount in law to the crime of treason.

D-22

Statements made by the defendant before this country's entry into the war, in so far as they may have indicated sympathy or preference for Germany or any criticism of the policy of the United States with respect to the war, were, as a matter of law, entirely lawful and proper, and the Jury should not consider such statements as any evidence of treasonable intent.

D-23

The Court instructs the Jury that under the laws of the State of Illinois a parent cannot be prosecuted as an accessory after the fact for harboring, concealing, maintaining, or assist-
1350 ing a son who has committed a crime, even though the parent has knowledge of the commission of the crime after the fact.

D-25

To be prosecuted for a crime does not change the presumption of law that the defendant is innocent, and you must so consider him, before you start your deliberations.

1350-A

D-26

Preliminary to your being sworn to act as jurors in this case you were examined by counsel as to your competency and qualifications to act as jurors in this case. As part of such examination each of you answered all questions put to you by counsel for the prosecution and for the defendant. Your answers showed that you were competent and qualified to act as jurors and the parties to this case accepted you as jurors on the faith and trust of your answers. The answers you then made to such questions in regard to your competency, qualifications, fairness and lack of prejudice are as binding upon you now as they were then, and should so remain until you are finally discharged from further consideration in this case. It would be improper and unlawful for any of you to disregard the answers that rendered you competent jurors.

D-24

No law of the United States is violated when a person in a general discussion expresses favorable or adverse opinions as to members of any race, color or creed, or regarding any nationality.

1350-B

D-27

The Court instructs the jury that you should disregard all testimony of witnesses for the prosecution relating to matters involving activities of Herbert Haupt, which occurred prior to the middle of June 1941, in deliberating upon your verdict in this case.

D-28

The Court instructs the jury that you should disregard all testimony of witnesses for the prosecution relating to any statements alleged to have been made by the defendant prior to June 17, 1942, in deliberating upon your verdict in this case.

D-29

The Court instructs the jury that you should disregard all testimony of witnesses for the prosecution relating to any statements alleged to have been made by the defendant prior to December 7th, 1941, in deliberating upon your verdict in this case.

D–30

The Court instructs the jury that you should disregard all testimony of witnesses relating to conversations with Herbert Haupt and all alleged statements made by Herbert Haupt outside of the presence of the defendant.

1351 The COURT. I have numbered this D–1. I think that is covered.

D–2, I think that is covered.

D–3, I think that is covered.

D–4. I do not think that is a good definition. "Where the act of a defendant which is alleged to constitute an overt act of treason, is of a private and personal nature not having a direct effect either to injure the United States or to give material aid to a country with which the United States is at war, then such act would not amount to treason." I do not think that is correct.

Mr. BERTRAM. That I think is very important to us. That comprises the theory.

The COURT. I am against you as to what an overt act must be.

Mr. WOLL. That is what number?

The COURT. D–4. "Where the act of a defendant which is alleged to constitute an overt act of treason, is of a private and personal nature not having a direct effect either to injure the

1352 United States or to give material aid to a country with which the United States is at war, then such act would not amount to treason." I think that is not accurate.

Mr. BERTRAM. If we may go back to the previous instruction, you are refusing this also on the same theory?

The COURT. I think that is covered. I have covered that. I think D–3 is covered.

Mr. WOLL. As a matter of fact I think the other is covered.

The COURT. It is covered.

D–5 is withdrawn as I understand.

D–6 is refused, not applicable.

Mr. WOLL. What is that number?

The COURT. It has to do with the statute of the State of Illinois.

D–9 which relates to photographs of equipment. That is covered.

The instruction on "witnesses testifying to oral or written statements made by the defendant before the commencement of this trial," that is covered. I think that is covered.

D–12, "If the motive for doing an act by a person accused

1353 of treason is to give aid or assistance to an alien enemy in his individual and personal necessities——"

D–12 I think is covered.

D–13, the presumption of innocence and reasonable hypothesis consistent with the defendant's innocence. That is covered.

D–14; if any witness testified falsely. "The jury are instructed further that the presumption of innocence is not a mere form."

The other instruction is that the presumption of innocence continues until such time, if such time shall come, when it is removed by evidence produced in open court.

I think this "The burden of proof never shifts"—no use talking about something that never happens. I have told them the burden of proof is on the Government. What is the use of talking about shifting?

Mr. BERTRAM. Do you not think that on the presumption of innocence my instruction should be given?

The COURT. I have told them the presumption of innocence continues and persists until such time if ever it is removed
1354 by evidence produced in open court.

Mr. FINN. That instruction has been held to be bad in two cases I know of.

The COURT. The burden of proof never shifts. No use talking about something that does not happen. There is something about the levying of the war on the United States. I do not like it, but it is in there at the request of the defendant.

Then "If * * * a single juror has a reasonable doubt—" that is just inviting a disagreement. Neither side is entitled to such an invitation. I am not going to give it.

"* * * if you believe from an examination of the evidence in certain of its aspects that the defendant is guilty * * *"

That is not the law. They should look at the evidence as a whole.

D–18 refused.

Mr. BERTRAM. That is a stock instruction.

The COURT. It is bad. I do not know whether it is a stock instruction. They should look at the evidence as a whole. I have told them if there are two possible theories they shall adapt that theory which indicates innocence.
1355 On the question of intent. I have given that.

Definition of treason. I have given a definition of treason.

Mr. BERTRAM. In the latter part of that instruction it informs the jury that the Constitutional requirement cannot be ignored, varied, or changed.

The COURT. That is the law. It is just like telling them "That is the law positively."

Mr. BERTRAM. It also says it cannot be extended by any statute or legal interpretation.

The COURT. Nobody suggested it would be. No use setting up, or getting the jury to set up something, not here, like setting up a straw man and then knocking it down.

Here is one covering assistance as a son or friend "without any intention * * * to aid the enemies of the United States." That is covered.

Mr. BERTRAM. I do not think your Honor has covered it properly.

The COURT. I am just telling you why I am refusing it. "Statements made by the defendant before this country's entry into the war, insofar they may have indicated sympathy or preference * * *" I have said he is entitled to his opinion, but they
1356 may consider it on the question of motive.

D-7. Felonies and crimes. * * * "The testimony of a witness who has been convicted of a felony is to be considered by the jury with extreme caution." I am considering that further, as well as 13. I want to consider 13 further.

D-8, also.

Mr. WOLL. Defendant's what?

The COURT. In one case you say—that is the defendant says, "* * * testimony of a witness who has been convicted of a felony is to be considered by the jury with caution * * *" and in the other, "with extreme caution."

I do not know what the law is. I will try to find it out. I think probably I could give an instruction along the lines of 13. I have given it many, many times.

D-8, I am considering that in connection with my 13.

Mr. BERTRAM. How is that?

The COURT. That is with reference to Burger, D-8 and D-7, Majerczek and Hamby. I am considering them in connection with my 13.

1357 D-11, relates to conspiracy to commit treason. Nobody has said anything about conspiracy. If we introduce that subject it is a subject foreign to the jury and I will have to define conspiracy. It is refused because it is not applicable.

Mr. BERTRAM. If the Court please, there is one here, but in our hurry I do not know if we have had a chance to read it, but I think it is extremely important. "No law of the United States is violated when a person in a general discussion expresses favorable or adverse opinions as to members of any race, color, or creed, or regarding any nationality."

We have got a number of statements here about the Jewish race or Jewish people. I think that is not covered by the court's instructions, and we particularly believe that we are entitled to that.

The COURT. Here are some you handed me, which I am numbering here. You handed these to me last night. D-20, D-21, D-22, D-23, D-24, D-25. "The Court instructs the jury that under the laws of the State of Illinois a parent cannot be prosecuted as an accessory after the fact for harboring, concealing, main-

1358 taining or assisting a son who has committed a crime, even though the parent has knowledge of the commission of the crime after the fact."

"No law of the United States is violated when a person in a general discussion expresses favorable or adverse opinions as to members of any race, color, or creed, or regarding any nationality."

That is true but I cannot state all the truth in this one charge. It is long enough now. I have told the jury that those expressions of the defendant prior to June 17, 1942, are to be regarded only on the question of intent. I have told them clearly what the crime is. I cannot see—have you any objection to D-24?

Mr. Woll. I believe your Honor will recall we did say we had a perfect right to make the statements that he did, and we have said he did not violate any law. I think you said that.

The Court. Which is it?

Mr. Woll. 58.

The Court. Yes.

"* * * Such statements of the defendant, if you
1359 believe they were made, are not grounds for charging the defendant with treason. The defendant, as well as others, had the right to his opinions and he had a right to express his opinion and to do anything lawful in keeping with those opinions and sympathies, but those statements, if you believe any were made, may be borne in mind by you in determining what his intent may have been after this country was at war with Germany, in committing, if you find beyond a reasonable doubt that he did so commit, any of the various overt acts charged in the indictment and submitted to your consideration by the court in these instructions." I think that is covered.

Mr. Bertram. This does not cover the same point at all. As I see it, it says something about expressing an opinion. It does not tell them it is not unlawful to express particular opinions.

Mr. Finn. If you want to insert in here, after "opinions" "including any opinion concerning any race, color or prior condition of servitude" in there.

1360 Mr. Warnholtz. If you have no objection, why not separate them? It makes it cumbersome.

Mr. Finn. If you want it, we have no objection to it being put right there.

Mr. Bertram. Insert that same sentence in the separate paragraph?

1361 The Court. "There has been some testimony of certain statements purported made by the defendants prior to the Declaration of War with Germany. Such statements of the defendant, if you believe they were made, are not grounds for charging the defendant with treason. The defendant as well as others

had the right to his opinion, had a right to express his opinion, and do anything lawful in keeping with those opinions and sympathies, but those statements——

Mr. WARNHOLTZ. It is not true if those particular opinions referred to at that time had a bearing upon the defendant's feelings with reference to the country—either the United States or Germany——

The COURT. Did he say anything about any person or color?

Mr. WARNHOLTZ. Not color, not in this case. It was concerning the Jewish people. That was brought out, I believe, three or four times quite strongly—at least three or four times.

Mr. BERTRAM. But in all the matters here, there is no emphasis——

The COURT. You are putting in something that is not in the case.

1362 Mr. BERTRAM. If you want to leave out "color", do you not think that should be stricken out?

The COURT. He did not say anything about race?

Mr. WARNHOLTZ. The Jewish people are considered as a race and as a creed.

Mr. BERTRAM. That phrase.

Mr. WOLL. I have no objection if you want to say: "No law of the United States is violated when a person in general discussion expresses verbally adverse opinions as to the members of any race or creed."

Mr. WARNHOLTZ. I see no reason why it should not be separated, because it detracts from the other instruction otherwise.

Mr. WOLL. Pardon me.

Mr. WARNHOLTZ. It detracts if you combine that with the other instruction.

Mr. WOLL. Where would you set it up there?

Mr. WARNHOLTZ. It is only detracting from the other one there.

Mr. WOLL. I think that is in line with what has been generally considered by the Court as proper form. I do not think it ought to be in any other place.

Mr. WARNHOLTZ. That ought to be a separate instruction.

1363 The COURT. Then these others, 59, so that these others follow, and they will also be changed, 60 becomes 61; 61 becomes 62; 62 becomes 63; 63 becomes 64; 64 becomes 65; 65 becomes 66.

(Said numbered suggestions were renumbered as stated.)

The COURT. I take it you will give me that decision, and I presume you will do that so that we can consider it before we started. I have covered that in there.

Mr. WOLL. Up to the present time we have found one case which says it is perfectly proper for the Court to instruct if the de-

fendant does not take the stand, even though defendant does not tender an instruction. It does not say you have to.

The COURT. Walker Butler took up a case on that specific thing and the Circuit Court of Appeals felt it was not error. The defendant got five years. I think that is generally a substantial sentence over here. I guess we are through with this.

I think I will attach to the indictment, when it goes to the jury, a statement or sheet of statements showing that overt acts 1 to 9, 18, 19, 24 to 29, inclusive, are withdrawn from the consideration of the jury as overt acts; that overt acts 10 to 17, 20 to 23, inclusive, are submitted to the jury or to the consideration
1364 of the jury as possible overt acts of treason.

Mr. FINN. Do you make the statement, or should it not be stated that the other overt acts, if there is any evidence, may be considered on the question of intent?

The COURT. That is in the jury's instructions. I want to send these instructions to the jury. I am going to send these instructions to the jury.

Mr. FINN. Does your Honor at this time desire to take up any matter as to exhibits going to the jury?

The COURT. What do you think about that?

Mr. WARNHOLTZ. The matter of what?

The COURT. Exhibits?

Mr. WARNHOLTZ. It seems to me since we have admitted the status of Herbert Haupt when he came to the United States that the submission of these exhibits, these destructive devices and so forth, might be somewhat prejudicial.

The COURT. How many exhibits have you?

Mr. FINN. I think about 65.

The COURT. Have you a list of those exhibits?

Mr. WOLL. I think we can give you a list.

1365 The COURT. Give us a list of the exhibits that you think ought to go.

Mr. FINN. We are of the opinion, your Honor, they should all go to the jury. They were all admitted in evidence. The jury has not seen any of them.

The COURT. Is there anything else we ought to do now?

Mr. FINN. No, your Honor.

Mr. WOLL. That is all I have in mind right now. Thank you.

Mr. WARNHOLTZ. No; if the Court please.

(Whereupon an adjournment was taken to Tuesday, June 6 A. D. 1944, at the hour of 2:00 o'clock P. M.)

1366 In the District Court of the United States for the Northern District of Illinois, Eastern Division, at Chicago.

UNITED STATES OF AMERICA

vs.

HANS MAX HAUPT

Before Hon. JOHN P. BARNES, Judge, and a Jury

Tuesday June 6, 1944, 2:00 o'clock P. M.

Court met pursuant to recess.

Counsel present: Messrs. J. Albert Woll, Earle C. Hurley, Richard G. Finn, appeared for the United States of America. Messrs. Paul A. F. Warnholtz, Frederick J. Bertram, appeared for the Defendant.

* * * * * * *

1367 The COURT. Will counsel please step into chambers?

(And thereupon the following proceedings were had in chambers outside the presence of the jury.)

The COURT. I have just found two cases on this felony impeachment, one from the Supreme Court of Illinois and they say: "At the request of the defendants the Court instructs the jury that Wilma Harjes admitted that she stood convicted of the crime of larceny; that the conviction of a witness for a felony was evidence tending to impeach her or his credibility, and that in determining the weight which they should attach to Wilma Harjes' testimony, they had a right to take into consideration the fact that she stood convicted of larceny." Convicted of a felony.

Then there is a case in the District Court of the District of Columbia. The District of Columbia Code has a provision that says no conviction of a crime shall render a man incompetent to testify, but that his conviction may be shown to affect
1368 his credibility as a witness.

"The defendants requested the Court to charge that the convictions of crimes of the witness Harker were admitted for the purpose of affecting his credit as a witness. The jury are entitled to consider whether they would give his testimony as much credence as they would the testimony of a person who was not convicted of a crime.

"And the Court said: 'I think you gentlemen understand from your experience the purpose of allowing that testimony of previous convictions. It is to shed light upon the credibility of the witness and you will consider it, of course, and consider whether Harker, in view of these convictions, should be believed. But you will consider it in the light of the testimony he gave on the stand.

the impression that he made upon you; consider it in the light of all the other testimony in the case as a mere circumstance as you will consider all other circumstances reflecting upon the credibility of Harker's testimony.'"

1369 Some criticism of the use of "mere circumstance." Now, have you got the data in respect to the exhibits?

Mr. FINN. We have no list of exhibits, your Honor. We have all those admitted here in envelopes. I can get the envelopes and bring them here.

The COURT. Suppose you bring them in and we will see what they are.

Mr. FINN. Does the Court desire those three shovels and the box of TNT? Do you want those brought in?

The COURT. I think not.

Mr. WOLL. First are these eight photographs of the saboteurs, Kappe and including Herbert Haupt?

The COURT. Any objection to the first eight?

Mr. WOLL. Photographs.

Mr. WARNHOLTZ. Your Honor, I think allowing them in, allowing any of this, will be prejudicial.

The COURT. No. Objection overruled.

Mr. WOLL. So far as Herbert Haupt is concerned. The money belt, which was Burger's own money belt.

The COURT. No necessity for Burger's belt to go in.

Mr. WOLL. The caps?

1370 The COURT. The military caps might go.

Mr. WOLL. The ring?

The COURT. I do not think that adds anything to that.

Mr. WOLL. The Social Security card?

The COURT. I think that is material.

Mr. WOLL. The time device?

The COURT. I do not think that is necessary.

Mr. WOLL. The pen and pencil set?

The COURT. I do not think that is necessary.

Mr. WOLL. The carton cover. If you will recall there was some controversy over that handwriting and the witness was cross-examined very severely how he knew it was the exact handwriting on that box in Germany. You may remember that.

The COURT. What is this?

Mr. WOLL. This is a case, a cover of a box which included these articles.

The COURT. I do not think that it should go in.

Mr. WOLL. The second box?

The COURT. No.

Mr. WOLL. Pictures of the boxes?

The COURT. No.

Mr. WOLL. The box does not show explosives?

1371 The COURT. No.

Mr. WOLL. The scene, taken at different times of the excavation of the boxes in Florida. That is just on the scene there——

The COURT. Well, I think as to the scene, number 29.

Mr. WOLL. I will refer to that.

The COURT. 29 is the only one.

Mr. WOLL. Only 29. The contents of the box. Another picture of the contents of the box. These are some more pictures of the exterior appearance of the box.

The COURT. These two can go in. You need not send those in.

Mr. WOLL. This?

The COURT. No; that does not go in.

Mr. WOLL. The registration card, Hotel Mayflower?

The COURT. That can go in.

Mr. WOLL. These are Mayflower records; Florida records?

Mr. WARNHOLTZ. There were some that were not admitted in evidence, if you remember.

Mr. HURLEY. These have been admitted.

Mr. WOLL. The hotels, if you recall.

1372 The COURT. Yes.

Mr. WOLL. Those are the hotel records.

The COURT. Yes. They may go in.

Mr. WOLL. This is the wrist watch, the Jewelry Company's bill of sale.

The COURT. That may go.

Mr. WOLL. This is the watch taken from Herbert Haupt.

The COURT. It need not go in.

Mr. WOLL. This is the telegram delivered to his folks.

The COURT. It may go in.

Mr. WOLL. This is the draft card; Herbert's card that he got in Chicago.

The COURT. That may go in.

Mr. WOLL. Originally?

The COURT. It may go.

Mr. WOLL. This is the Warner Motor Sales.

The COURT. It may go.

Mr. WOLL. This is a copy, a wash copy.

The COURT. It may go. Let us see—it is just a wash copy. No; the telegram is in, is it not?

Mr. WOLL. They are both wash copies.

The COURT. Is not the telegram in here?

Mr. WOLL. No; the telegram—we had a different tele-

1373 gram, I think.

The COURT. This is the telegram.

Mr. WOLL. This is the telegram sent on December 7th.

The COURT. It may go.

Mr. WOLL. A picture of the front steps.

The COURT. It may go.

Mr. WOLL. Of the house.

The COURT. Of the house?

The COURT. It may go.

Mr. WOLL. The naturalization petition.

The COURT. Yes.

Mr. WOLL. The declaration of war?

The COURT. Yes; it may go.

Mr. WOLL. The letter of Norris testified to, written to us, cross-examined; and then on redirect I offered to introduce it of Norris and Hamby?

The COURT. No. I do not think that ought to go in. Unless there has been argument made, which has not yet been made.

Mr. WOLL. I understand, your Honor, we can use those with the jury in argument?

The COURT. Yes.

Mr. WOLL. Because those have gone in as exhibits here?

1374 The COURT. They may be read.

Mr. WOLL. For the purpose of the record, Government's Exhibits 65, 66, 62, 60, 61, 59, 53, 55, 54, 51, 52, 46, 45, 44, 47, 48, 49, 43, 42, 40, 39, 36, 31, 30, 29, 21, 15, 16, 17, 18, 1, 2, 3, 4, 5, 6, 7, and 8 are being, under the Court's order, submitted to the jury after they have retired. All other exhibits are not being taken into the jury room.

The COURT. There is a sheet of paper which reads:

1375 "In accordance with the instructions of the court, heretofore given you, there are withdrawn from your consideration, as possible overt acts of treason, the following alleged acts charged in the indictment:

Overt acts numbered 1 to 9, both inclusive;

Overt acts numbered 18 and 19; and

Overt acts numbered 24 to 29, both inclusive.

And that there are submitted for your consideration, as possible overt acts of treason, the following alleged acts charged in the indictment:

Overt acts numbered 10 to 17, both inclusive; and

Overt acts numbered 20 to 23, both inclusive.

The COURT. I am amending instruction numbered 13 to read as follows. I am going to insert, or I am going to make an insertion: "Certain witnesses who have testified in this proceeding have admitted that they have been convicted of felonies. Proof of conviction of a witness of a felony is evidence tending to impeach his credibility and in determining the weight which the jury

1376 should attach to the witness' testimony, they have a right to take into consideration the fact that the witness has been convicted of a felony. You have heard the testimony of these witnesses and observed them while testifying. The fact that a witness has been convicted of a felony does not mean that he cannot tell the truth. You should weight the testimony of such a witness by the same rules that you would weigh the testimony of any other witness. But the fact that a witness has been convicted of a felony may be considered by you in determining the credibility of such a witness." That will go in as 13.

Mr. WARNHOLTZ. We have a few exhibits, if the Court please; the defendant.

Mr. BERTRAM. Those only include the ones actually received?

The COURT. They may be received.

Mr. WARNHOLTZ. May I enumerate the exhibits?

The COURT. Yes.

Mr. WARNHOLTZ. Numbers 1, 2, 3, 5, 6, 8, 9, 10.

The COURT. Anything else, gentlemen?

1377 Mr. BERTRAM. May I ask, are you going to adjourn at 4:30, your Honor?

The COURT. Yes. You may bring in the jury.

(And thereupon the following proceedings were had in open court in the presence and hearing of the jury:)

1378 *Opening argument on behalf of Government*

The COURT. You may proceed, gentlemen.

Mr. FINN. May it please the Court.

The COURT. Mr. Finn.

Mr. FINN. Counsel, and ladies and gentlemen of the jury:

I do not believe there has ever been a jury within my memory which has with such patience and in such insufferable weather listened through the evidence of a long trial. Neither the heat nor illness, nor the tedium of the trial in any way has deterred you from giving us your utmost attention, and I know that the defense will join with me in thanking you right from the beginning for that avid attention in this case.

It is the duty of the government and it has been passed on to me, to open the arguments at this time. I confess to a certain sense of inadequacy at this task. The gravity of the charges, wartime, and the repercussions of a trial of this character, all weigh heavily upon a person who has the burden of arguing the facts in a case of this importance, and yet that burden has

1379 been cast upon me. I intend to carry it out to the best of my ability. You likewise have a duty to perform.

When you were selected as jurors in this case you pledged us

your word, and we know that you meant it, that you would decide the issues in this case without prejudice, without bias, with your minds and your intellects, rather than with your sympathies, that you would let the chips fall where they might and decide the issues of fact, and we know at this time, at the conclusion of this trial, you were sincere in your pledge, and that you will stick to it to the end.

In our country, if in no other, matters of this character and questions of this type are decided in a Court of Law in accordance with the Constitution and the strict rules of Evidence. There is cast about the defendant the cloak of the presumption of innocence. There is also cast upon the government the burden of proving the guilt of the defendant beyond a reasonable doubt. We, of the prosecution gladly accept those rules and that burden in this case. We feel confident that under those rules, in carrying that burden you will eventually reach a just, a true verdict.

1380 On the morning of December 7, 1941, the crunch of bombs was heard at Pearl Harbor and the clarion call of war sounded throughout this Nation. At that time every man, woman, and child in this country was called upon to bear true faith and allegiance to the loyalty which he had sworn to this Nation. It mattered not whether he was born here or whether he came here, attracted by the obvious benefits to be achieved and accomplished in a society of this character. From that hour when the President by proclamation acknowledged a state of war to exist, every German soldier, every spy, and every saboteur became and was an enemy of the United States. The Court will instruct you that that was true regardless of the relationship that might exist between the parties, regardless of whether that spy or saboteur was a son or a brother or a cousin, or whatever relation he might be to the citizen of the United States.

It was still the duty of every man to bear true faith and allegiance to his country in its time of peril. Under the law any relationship between the parties is immaterial.

1381 Mr. BERTRAM. I object to that, your HONOR, I do not think that counsel should make the statement that the Court may give in his instructions; that matter should be left to the instructions of the Court.

The COURT. I shall instruct the jury with respect to relationship.

Mr. FINN. Ladies and gentlemen, proceedings of this character are started in the criminal court by the filing of an indictment. That, of course, the Court will instruct you is not evidence of guilt. In this instance I merely wish to point out a few of the provisions of the indictment. The Court will in its instructions, as I understand, analyze the indictment for you.

This indictment, was returned in February of this year by the Grand Jury of the Northern District of Illinois and provides that this grand jury enrolled for this district: "* * * upon their oath present, that Hans Max Haupt at Chicago, Illinois, in the Eastern Division of the Northern District of Illinois and within the jurisdiction of this Court, continuously and at all times from June 17, 1942, up to and including July 17, 1942, under the
1382 circumstances and conditions and in the manner and by the means hereinafter set forth, then and there being a person owing allegiance to the United States, in violation of his said duty of allegiance, unlawfully, feloniously, maliciously, intentionally, traitorously, and treasonably did adhere to the enemies of the United States, to wit, the Government of the German Reich, its counselors, armies, navies, agents, representatives, and subjects with which the United States, at all times since December 11, 1941, has been at war, and did give to said enemies aid and comfort; that is to say—"

Then the indictment goes on to allege that Hans Max Haupt in the year 1930 became a citizen of the United States and thereafter owed allegiance and loyalty to this country.

The indictment further alleges or recites that the son of this defendant, one Herbert Haupt came into the United States on or about June 17, 1942 as an agent, spy, and saboteur for the government of the German Reich to serve that government during a period here.

1383 The indictment then alleges the character of the service of Herbert Haupt as an enemy agent; such things as the bringing here of explosives, materials, destructive devices, things of that character for the purpose of disrupting national defense. There are other allegations of that character. Then after the character of Herbert Haupt's service is alleged the indictment goes on to charge that Hans Max Haupt, that the service of giving aid and comfort by Hans Max Haupt to Herbert Haupt consisted: "* * * consisted in his receiving, harboring, relieving, and assisting Herbert Haupt, in transporting said Herbert Haupt by automobile, and in his furnishing hospitality to the said Herbert Haupt * * * in his aiding, abetting, meeting with, assisting, counseling, and advising Herbert Haupt in and concerning said service of said Herbert Haupt to the government of the German Reich; in his countenancing said service; in his carrying out requests and instructions of said Herbert Haupt in connection with said service; in his purchasing an automobile for the
1384 said Herbert Haupt; in his attempting to procure employment for the said Herbert Haupt; in his giving false information regarding and concealing the identity of said Herbert Haupt, as a representative of the Government of the German

Reich, and the mission of Herbert Haupt in the United States; in his receiving, holding, possessing, safeguarding, and concealing the property and funds of said Herbert Haupt and in misrepresenting and concealing the ownership of said property and funds."

The indictment then alleges that in the course and for the purpose of accomplishing these objects which are charged that the said Hans Haupt then and there performed some twenty-nine overt acts, or what are known as overt acts. The Court will instruct you as to what the nature of an overt act is and I shall not go into it, I shall not go into that subject too deeply at this time. However, I do wish to point out to you one thing, because Mr. Warnholtz in his opening argument made the statement that the evidence would merely show that Hans Haupt performed commonplace, little things.

1385 With reference to the nature of the overt acts I want to say this: The overt act, or an act of treason if you want to call it that, is any act which is done in pursuance of in the furtherance of a treasonable design. In other words, it is any act which is done with treasonable purposes.

The Court will instruct you, as I understand it, that that act need not show upon its face that it is treasonable. It does not have to be that.

For example, it does not have to be an act which by its very nature shows upon its face that it is done with treasonable intent. Any act even though it may be innocent appearing on its face, if it is done with the requisite treasonable intent is an overt act of treason.

Now, let me give you an example of what Mr. Warnholtz might term commonplace things. He said, and he will argue undoubtedly that after all what was done was to house a boy, a son, a commonplace sort of thing, the boy comes home and he is

1386 housed there, and he will argue that is not treasonable, to feed a son; it is not treason to buy an automobile; and it is not treason to procure a position; those are just normal, commonplace things. But if those commonplace things are done with the knowledge of the fact that this young man is an enemy agent, and if the things help him in his character as an enemy agent then those are treasonable in their nature, because no one questions or can say——

Mr. BERTRAM. I will object to that. I will object to that, if the Court please, on the same ground. I dislike to interrupt counsel, but counsel is invading the province of the jury.

The COURT. Objection overruled.

Mr. FINN. The gist of the whole matter is this: Did Hans Haupt at the time when he performed those acts know that his son was here as an enemy agent? Every man is presumed to intend the

usual and probable consequences of his deliberate act. If A comes here as an enemy agent and B knows that he is an enemy agent and with such knowledge performs any such act of aid of comfort to that person, then that act is treasonable in its nature. You know these little commonplace things are just exactly what are
1387 needed by these agents who come from foreign countries. Every expedition of this character, every one, depends for its success or failure upon the cooperation in little commonplace things by people just of this defendant's character, who supply his needs and a place to hide. A spy needs someone to buy an automobile in a manner in which his own identity is concealed. A spy needs someone to get him a job in an optical concern so that he can get plans out of there and furnish that information to the rest of his saboteurs. A spy needs a place where he can send his mail, where it can be taken by somebody and brought into the home. A spy needs a room some place. Those little commonplace things are the acts of cooperation which are, although on their face they do not show perhaps, treasonable design, yet underneath, if performed with that treasonable intent with knowledge of the fact that he is a spy, then they are treason.

The theory of the law is this: That the door of every citizen must be shut to agents of this character, who come from foreign nations to skulk in our midst, the doors of every citizen must be closed so that he must roam, so that he cannot hide, so that
1388 he can be caught. That is the theory of this overt act proposition.

What is the crime of treason? It is defined similarly in the Constitution and the statutes. The Constitution provides, I believe, and the defense will certainly correct me if I am wrong: "Whoever owing allegiance to the United States levies war against them, or adheres to their enemies, giving them aid or comfort, shall be guilty of treason." The Constitution then goes on that: There shall be no conviction of treason unless on confession in open court—of which there has been none in this case—or on the testimony of two witnesses to the same overt act.

In other words, the Consfitution requires only that one overt act be proven by the testimony of two direct witnesses—not twenty-nine acts, or twelve acts. The Court is submitting twelve to you as overt acts of treason in this case. All of those do not have to be proved, just one overt act must be proved by the testimony of two direct witnesses.

Treason is defined in the first section of the criminal code
1389 in somewhat the same manner as it appears in the Constitution. Treason is the first crime in the category of all crimes, and that is true because treason strikes at the very root and the very foundation, and the very existence of our society

as a whole, beyond robbery, larceny, or murder. These other crimes strike at individuals, but treason strikes at us all, and that is why it is placed as the first crime and the most heinous crime in the criminal code. The law of self-preservation, of ourselves as a nation, demands that this be so.

There are two types of treason. One is the levying of war, which is not charged in this case; and two, the adhering to the enemies, giving them aid and comfort. Of course, the Court will instruct you that treason cannot be committed inadvertently, and before a defendant can be convicted of treason it must be shown that he has the requisite treasonable intent as the Court will define it to you.

I want you, however, and I think the Court will instruct you on this subject, to distinguish between intent on the one hand and motive on the other. Intent means that an act is done deliberately, deliberately, and not inadvertently. Motive on the
1390 other hand means the thing which moves a person to do it, and if I may I will give you an example which I think is pertinent.

Let us say that A is the son of B, and A comes from Germany to this country; he goes to B, who is his father and says, "I am over here as an agent of the Government of the German Reich; I have certain duties to perform; I have got to blow up some factories," or something of that character.

B says, "Well—(A asked for his assistance).

B says: "Well, I do not like to injure America. I do not like to help Germany, but you are my son and I would like you to get along in your business. I like you. You are a fine boy, so I will give you what assistance you want. I will go out and buy some dynamite for you. If you need an automobile to transport these explosives I will go and get you an automobile. I do not want to injure America. I am doing it for you because you are my son."

Ladies and gentlemen, that person is guilty of treason.
1391 The motive which impels the act, may be a motive to help his son, or it may be for example to make money, if the boy comes home with a lot of money, but as soon as he knows that that person is a German agent, over here to do these things and he gives and deliberately gives him aid and comfort then he has the requisite treasonable intent. I would like to have you thoroughly understand that in your decisions on the issues in this case.

There are certain elements which it is necessary for the government to prove. First, it is necessary to prove that Herbert Haupt was an enemy agent. Second, we must prove that Hans Haupt

knew he was an enemy agent. Thirdly, it is necessary to prove that Hans Haupt with that knowledge of his enemy character, committed with treasonable intent one overt act which was proven by the testimony of two direct witnesses to the same act. Those are the elements which are required and which it is required of the government to sustain.

Now, let us get to the first element. The government has to prove beyond a reasonable doubt, to your satisfaction, that Herbert Haupt was an enemy agent. We introduced a great deal
1392 of proof on that issue. We had first the testimony of Mr. Burger whom I do not think you will forget for a long time. We have the testimony of Liebl, this young man who forsook his family in Germany and came back to the United States and joined the Army, first the Marines and then the Army. I think we all owe him a tribute.

Then there was Mr. Parsons, and Mr. Connelly, Mr. Pryor, these agents who dug up the material down in Florida and identified it, and testified to its explosive nature, and who explained it to you.

Then we have the hotel people in Florida, the record of the watch purchased by Herbert Haupt down in Florida. The Draft Board officials, Miss Gordon from the Draft Board and Ralph Gregg from the FBI who testified that this young man came to register and told them that he had come back from Mexico, and we have this young man, Mr. Haas, who was contacted by Herbert Haupt while he was here, I believe it was on a Thursday night—while he was here and who said that Herbert Haupt told him that he had a message—that Herbert Haupt had a message which had come from a High Germany military source, to give Mr. Gerhard Kaufman, from his brother-in-law, Walter Kappe
1393 I think you will remember Mr. Kappe, the leader of this sabotage school in Germany.

These witnesses, all of them have told to you, in my opinion, the most shameful saga of this war. This was the most diabolically conceived, the most carefully prepared plot to strike at the heart of the airplane production of this country. It was conceived with the idea in mind that one of these skulking saboteurs with inside knowledge of the various devices in defense plans, such as the Alcoa Company, the Aluminum Company of America, and the other productive concerns, with inside knowledge of their workings, with a little TNT could do more damage and more effective damage to that industry than a flock of bombers at twenty thousand feet. You see, they had everything all worked out with characteristic German precision.

When they went out to the factories in Berlin they showed them the weak spots of all of these industries, the places where

the electrical current went, for example, you remember
1394 Burger's description, of how they planned to destroy this Alcoa plant and make it ineffective for months. These aluminum pots, when the electricity is cut off, freeze. The metal freezes and the pots themselves are filled up, and they have to be removed after long, long months, and during that time they are ineffective. You see it is scientific. It was a scientific process, a precise plan that was worked out.

You will remember that Mr. Burger said they sent them out to various locks in Germany, and an expert on locks there instructed them. He had definite figures on the various types of locks and dams and developments over here in this country so they would know just where to place these explosives and just how much explosives to use, so that they could cripple those locks in this country.

We introduced in evidence in this case a number of exhibits which were not given to you at that time. Before I show them to you I want to refer a little bit to the sabotage school in Brandenburg; but perhaps before getting to that I had better get to the story how the young men got over there.

You will remember that about the middle of June 1941,
1395 Wolfgang Wergin and Herbert Haupt, these young Nazis, for they were that, they were brought up to be that, Nazi philosophy was infused into their character at their very fireplaces by those fathers who hated this country, infused with this German philosophy; Nazi philosophy.

When the young men of our country were rallying to the Colors and we were preparing for war, and were being called to the draft, these two young men instead of seeking adventure in their own army, or in their own navy, or in their own Marine Corps, left this country, obstensibly on a trip to Mexico. You know the story of how they got down to the border, and how when they got there one of the boys had to turn back, Hugo Troestkin had to turn back, but Wergin, Wolfgang Wergin and this young Herbert Haupt went down to Mexico. There these two young men, American citizens, contacted, not the American consul, but the German consul and by means of the German consul they got transportation to Japan; and in Japan they again contacted the German and the Japanese consuls and through their assistance got on this blockade breaker. Leibl testified Haupt sail'd to Bordeaux. Do you remember how from there in some
1396 manner or other, Herbert Haupt arrived at the Brandenburg school

You remember Burger's description of what took place at that school. I am not going through all of these details. However, I would like to show you some of these exhibits. First are the

pictures of Mr. Koppe, and evidently his wife, who was the leader of that school. The next one is of John Daseh. These are going to the jury so that you can have them with you and you can look at those. This is the young man, Herbert Haupt. I think this is Burger; this is Kerling who was the leader of the second group, to which Herbert belonged.

This is Neubauer. This is not the first time we saw Neubauer in this case. You remember Mrs. Fishman said that Neubauer and several other young men, Herbert Haupt's friends, used to go out to the Fishman estate out in Glencoe where the Haupts lived and that he was one of those who had rifles cached out there at that place. This is Heinck and Querin, and the rest are shown in this picture. I am not going to review the testimony of Mr. Burger, because I think it is vivid in your memory. However, there are some things about it that I think I ought

1397 to draw to your attention, just in order to show you that these people meant business. I just want to show a few of these things to you.

This is a photograph which was identified as the photograph of a coal bomb, which is made with a plastic substance around it, and then a hole which you can see in the end of it, and inside is enclosed a block of TNT. The requisite detonator is set into that hole. Of course, that will set off the bomb. It can be placed in the firebox of a train. It can be placed in a boiler in any kind of an engine and, of course, it will accomplish the desired result.

These two exhibits, I think, are particularly interesting to you and, inasmuch as they will not go to the jury, you may want to take a look at them. I think they are ingenious, so much so that they should be brought to your attention. This is a pen and pencil set. One of them is the pen and I think it is marked "King" and the other is marked—I think both of them are marked "King." At any rate, both of them write. You can write with this

1398 pencil just as you would write with one that is in your pocket. The pen has a very fine point in it.

Enclosed, as Mr. Parsons described to you, in the pencil was a capsule of acid and below that capsule was a diaphragm of cellophane and below that was a deposit of a chemical.

Then when you screw the two together the capsule would break so that it permits the acid to eat its way through the diaphragm. That acted as a timing device, down to the explosive material. That, of course, would generate heat, as he said, at 2,500 degrees centigrade. It could be used as a detonator or as an incendiary device.

The next, I think, is very ingenuous, and consists of a fine jewel mechanism, which as Mr. Parsons described, can be set and

used as a timing device and can be set for fourteen days. In other words, I can set this clock, I can set it and attach it to a detonator, and set it for two weeks from now, and at the very precise moment when it is set for, it will blow up the object that is desired.

When the material was uncovered in Florida and taken to the garage in Jacksonville, there appeared to be four boxes.
1399 There were eighteen individual blocks of TNT in each of two boxes, and then a smaller amount of TNT in another; and the fourth box contained all these various devices which you see here. You see they came prepared not only to blow up, not one thing, but many things.

In addition to that at this school—in addition to that at this school these people learned to build up what Mr. Burger called a "front!" That was perhaps the most interesting, precise psycological process in the whole case. You remember that Burger said that each one of them was given a certain task; one was to buy a farm. He had been a farmer before. Incidentally I think the record shows that all of these men had been chosen because they had been over in this country before, and could pass around among you, pass among us without any suspicion whatsoever, speaking good English. Of course, Herbert Haupt was certainly in that category.

One of them was to buy a farm so that he could buy nitrates, things which were apparently to be innocent appearing and yet which would, when mixed with other chemicals, make these very explosive devices.

1400 Another one Burger said was to open up a Commercial Artists studio here in Chicago. Another was to be a cook. The farm was to be used for two purposes. One was to buy these chemicals inconspicuously. The other purpose was to have a place to put this explosive material when they got it from Florida so they could bring that to this place and they could go to this place and from there go around this country with it and blow up what they wanted to blow up or do what they wanted to do.

Some of the instructions that were given—some of the instructions that were given to Herbert Haupt are significant. In the first place he was to furnish a car for his group so they could get around. In the second place he was to get employment in the Optical Industry and if possible furnish all information that he could get concerning the Norden Bomb sight. You see there they are still striking at another phase of the airplane industry. I presume the Simpson Optical Company was mentioned because they were at that time engaged as subcontractors in the making of the Norden Bomb sight and Herbert Haupt had worked there before.

1401 Inasmuch as they knew that the Federal Bureau of Investigation were looking for Herbert Haupt because of his failure to register for the draft he was told to register for the draft immediately upon his return and to report to the FBI so as to throw them off the trail, so as to allay suspicion.

He was also instructed that he should not go near his folks—but he evidently broke those instructions. I do not think there is any question about that. He was instructed to find a place to cache this amount of money which he, together with other members of his group brought over to this country in a zipper bag.

As to Brandeburg, after they had gone through all those instructions, these tests including practicing in rubber boats and so forth, they went on to Berlin where they were taken on to these factories and these places that were mentioned. From there he went to Lorient. You know the story how they got into the submarine and came to this country.

Unfortunately all of Herbert Haupt's group have been executed as spies. We have no direct witness as to what
1402 took place, but it is easy to follow the trail from the evidence that has been presented in this case. The four young men evidently landed on the 17th of June or about the 17th of June and proceeded to Jacksonville, and they split up. Just as Burger's group split up. They split up into two groups. One went to the Mayflower and the other to the Seminole Hotels down in Jacksonville, just two blocks away.

If you will examine the records of the hotel people when you go into your jury room to deliberate, you will find that within ten or fifteen minutes Kerling and Thiel, I think it was, or as he was called Thomas, registered. Kerling and Neubauer registered at one hotel and Haupt and the other man had registered at another hotel.

We find that very day that telephone calls as shown by the hotel records went from the rooms of one hotel to the rooms of the others, of these people, and that evening, Kerling who was the leader of the second group came over to visit Haupt and his companion in their hotel. So you see the whole thing is tied up, not only tied up in Germany, not only linked in Germany, but linked in this country.

1403 They were brought to America. Then in accordance with their instructions Herbert Haupt and this Neubauer arrived—Herbert Haupt and another young man came here to Chicago.

From there on let us examine this evidence microscopically. Do you not think the Government has proven beyond all reasonable doubt that Herbert Haupt came here as an enemy agent, a spy and saboteur for the German government? Mr. Warnholtz in his

opening statement stated that he would show that Herbert Haupt abandoned his mission. Why, ladies and gentlemen, there is not the slightest scintilla of evidence in this case of any such abandonment of this mission. I say that the evidence is clear that this young man was acting as a German spy, carrying out his instructions when he was here. What do you think he went over to see Haas for on Thursday night? He told Haas that he had a message from the high German military authority, that he wanted to give to Gerhardt Kaufman, a message from Kappe, the leader of the sabotage school at Bradenburg, his brother-in-law, in this country.

1404 Was he acting as a spy? Do you think that he would have been executed in Washington if he had abandoned his mission?

Mr. WARNHOLTZ. Objection, I object to that as being a conclusion.

The COURT. Sustained.

Mr. WARNHOLTZ. Counsel has no right to draw.

Mr. FINN. All right. What does the evidence show? On the second issue, that Hans Haupt knew that this boy had come here as an enemy agent, and then with such knowledge he aided him.

Let us look at this from the standpoint of common sense, without any reference whatsoever to any admissions made by anybody, or any talk to anybody in this case. Let us look at it from the common sense standpoint.

You people are here as jurors and you come from all walks of life, and you all have ideas on each one of these subjects. You do not have to throw away your common sense when you come into the jury box.

Here is a young man who was brought up by his father as a German; his father had been a veteran of the German
1405 Army; he was a trustee of the German Ward War Veterans in this country. His only statement through the year from 1936 down to 1941 showed that he was a most fanatical Nazi. That is all on that.

Here was a boy, a perfect product of his father's ambitions. Why in 1939 this father declared that he would never allow his boy to join the American army to fight over in Germany, that he would kill him first. That is the type of man that Hans Haupt was. That was the type of man that this young boy came home to. He made similar statements of his feelings at different times. He said that if he was called or drafted into the American army he would crawl over the line and give information to the enemy. All right, this young man comes home to such a father, to such a home, to such an atmosphere in which he has been brought up as a German, not an American boy, and he is just bursting with

this information, this secret information, and he is bursting to the extent that he told a comparative stranger, Mr. Haas, that he had come from Germany Thursday night.

Well, ladies and gentlemen, what do you think took place that night in Herbert Haupt's home here. Do you not think
1406 that that boy told his father and this mother all about his travels? They were in sympathy with him; they had sent him there; he was fulfilling the prophecy of his father made in 1940 when he said that we would have a revolution from within; here was a boy, come back to fulfill that prophecy. So do you think that he kept from his mother and father the story of where he had been? Can you in all common sense believe that?

Let us glance at the evidence of whether this man knew or did not know whether his boy had come from Germany as an agent of the German Reich. On August 5th, two weeks after he had been originally arraigned, this man evidently enraged at one of his codefendants, Wergin, called the marshal and asked the Marshal to have an FBI man or somebody from the FBI come over and interview him. This came at his own suggestion. These two young, clean-cut young men were sent over there and what did they do?

Well, Mr. Hirsch says that Hans Haupt told him that right then, that on that very first night, June 19th, he and his wife went to the Froehling home; that there Herbert Haupt, in the presence of the Froehlings and the Wergins told the story about his trip to Mexico and to Japan, and running through the
1407 British blockade to France, and of his going to enlist in the German army, but enlisting in some type of German government Intelligence school, and his return to the United States in a German submarine. That is what Hirsch testified to as to what Hans Haupt said took place that first night.

He also testified that on June 20th, that was the night they went over, if your remember, at eleven o'clock, to the Wergin home, he testified that Haupt told him that on June 20th that he, his wife and Herbert went to the Wergin home on South Wood Street, and in the presence of all Herbert Haupt told his story of his trip; that he contacted a German consul in Mexico and obtained passage to Japan, where he was met by the German and Japanese consuls, that he ran the British blockade landing in France, that Herbert stated that he was in an intelligence school; that he had huge sums of money to use in that connection; that Wergin said that "he was no dummy and knew the ropes, and that he himself had worked in a similar capacity in the last war;" and that Wergin thereupon offered his services because he said he could use some of this money that Herbert had.

1408 What took place on the evening of the 21st; Sunday?

Sunday they were all in the Froehling home. They were all there and what took place there? Well, you know there was no birthday party at that time. They said there was a birthday party, but there was no birthday party at that time. There was only these six people there, and they were always the same people on the various evenings and you will recall when this boy came, and incidentally the evidence shows that this young man, Wergin, went over to Germany with him when he went to Japan, through Mexico to Japan into Germany. Do you not think that if this young man went over there at that time to the Wergins he did not tell them about this son? And where he went in Germany? Do you think he lied to the mother of his pal who had gone through all of these adventures with him, and who was evidently of the same character and stripe that he was.

On the 21st, with reference to that, this meeting Hans Haupt said also—on Sunday night, June 21st the Wergins were also to the Froehling home and stayed there and there for about an hour he told the same thing about his trip to Japan and into Germany and into the Intelligence School and he told how
1409 they came to the United States, on the German submarine and he told the people, these various people, and they were all over there in the Froehlings. From Froehlings they went to the Haupt home, and again he told them about his being in the Intelligence school. Haupt said that he wanted to testify against Wergin because he, Wergin, had told the boy he wanted to help him in this plan of his.

Robe's testimony is almost identical; very similar: that Hans told him on the first night, Haupt told Robe that Herbert had told him on this first night, told of his trip to Germany, of the return by submarine, at the Froehling home at dinner. Then he said—Haupt stated or started the conversation by saying that he felt that Wergin and his wife were just as responsible, knew just as much about the situation as Haupt and his wife and they were equally responsible and he wanted to testify against them. I am not going to read this. You will remember the testimony of Mr. Robe to the same effect.

There is one further addition, and that is that Haupt said or mentioned having a large sum of money and also mentioned
1410 that Herbert's duties in this country were that of contact man.

At the meeting on Saturday, June 27, the Haupts, Froehlings, and Wergins were all present at the Haupt home and all decided that Hans Haupt—that is what Hans Haupt said, they all decided that if anybody made any inquiry they would not know anything about Herbert. That is what Hirsch and Robe testified.

And that Saturday evening they all said. Hans Haupt told him.

that on Saturday evening they were all worried because Herbert had not come home and it was then decided that if anybody asked any questions, or if the FBI came around, or the FBI asked any questions they would all say they knew nothing about the matter, except that he had been to Mexico. Do you think that Hans Haupt knew that his boy was a German agent?

What else have we on this subject? There is the testimony of the two convicts. You know the government in this case holds no brief for convicts. It would be ill advised on the part of Mr. Woll, Mr. Hurley, or myself to try to condone or excuse the crimes which put Norris and Hamby in the penitentiary; and yet you know there are some things in this country—there are some
1411 things that even the worst convicts won't do, and some of them have the "guts" enough, some of them have courage enough, some of them have principle enough, even though they are in jail, not to betray their country.

What did Norris say? I think you were impressed by this little fellow, by his sincerity, and his apparent efforts to tell the truth, the whole truth on the witness stand, through what was a very gruelling cross-examination.

Norris said that Hans Haupt told him that he was in jail for having German money. You will remember how the conversation happened to come about. I think Hamby related that he and a number of the other convicts were "beefing" as they called it, about their sentences and complaining about gestapo methods that were used by the people's attorney or the state's attorney in the state courts.

They were all talking about their convictions, what they should try to do about them, and you remember Haupt said, "What will they give me?"

Hamby said: "Well, how can I tell you what they will give you unless you tell me what you are in here for? What are you in here for?"

1412 "I am in here for taking German money."

"What do you mean by that; German marks?"

"No; not German Marks, American money that was brought over from Germany."

And then Haupt related what happened when his son came back, and what did he say? Norris said that Hans Haupt told him he was in jail for having German money, that is, United States money from Germany and Hans also stated that he had received a letter from Mexico stating that Herbert was on his way to Germany, and then he received word from Herbert from Tokyo and Hans stated that he was—the night he was notified from his relative's home, the night when he got there he was scared and surprised because Herbert was there.

Is that the normal reaction that a father would have when a son went away, when he found that his boy had returned from an innocent trip to Mexico? He had been away when it was time for him to register, but that is nothing against him. A lot of people are away when it is time to register and they come back and report to their draft board and that is all over with,
1413 but Hans Haupt was scared when his son came back here.

Sure he was scared. There was a cold clutching hand of fear at his heart and why? Because Hans Haupt knew what happened, and he knew what happens to spies in wartime and he knew at that time what happens to people who harbor them, and who give them aid and comfort. Sure he was scared.

He was not scared because the boy was not there when the draft call came. He was scared from that very moment when he knew that the boy was back here and as he said to Norris, "To do no good to this country." How much time have I, your Honor?

The COURT. You have used 57 minutes.

Mr. FINN. Continuing with the analysis of the testimony of Mr. Norris, Hans also stated that he received a letter from Mexico stating that Herbert was on his way to Germany and of his receiving word from Herbert from Tokyo.

Incidentally, you will remember that Carl Eggert, who was a very close friend of the Haupts also testified that Haupt told him that his boy was on his way to Germany, which is another reason why he was scared at the time the boy came back.

Hans stated that when he was notified from the relatives' home, when he got there he was scared and surprised because
1414 Herbert was there. He was scared because the FBI agents and the Selective Service people were looking for him, to report for his classification and Haupt said that Herbert had told him how he came from Germany in the submarine; and how they had landed in the submarine at Florida, in a rubber raft, and had told about being in the sabotage school in Germany; and he told about the making of the chemicals in Germany and he told about leaving Germany in the submarine and he was scared.

Hans also said that Herbert said that they had landed by means of a rubber raft and he told about the change of clothing, and he stated that they had buried their clothes in the sand, and also what he had done after they had changed clothes.

Hans also told him about the money that Herbert gave him, $1,000 to buy an automobile, and he also told he gave him some money. Hans said that he had hidden some of the money under a rug; and that Herbert had the money, had taken it out of a money belt.

Hans told him that Herbert wanted an automobile to travel around in, and Herbert gave him the money to purchase the car.

Hans said that the first conversation took place in the
1415 Froehling home incidentally all of these witnesses have testified that at the Froehling home, they were all there, Froehling and his wife, Wergin and his wife, and Hans Haupt and his wife were all there.

What does Hamby say about that, on this question of knowledge. He said, as I have told you, the conversation was introduced by the discussion about various convictions and what they were there for and so forth, and in that conversation Hans Haupt told him of the boy's desire to go to Germany and to join the German army; that he went from home, to Mexico and to Japan; that on June 19th the relatives telephoned him and told him to come over to the Froehling house, and what does he say: "How did you get here?" And Herbert told him; that is, he said he asked the boy how he got there. That would be the first question the father would ask, would it not?

Herbert told him that he come back on a German submarine, and he saw Hans at first did not believe him, that he told him he was to blow up ammunition dumps, factories, and he said Haupt said he told him, that is he told Herbert he would help
1416 him as much as he could.

Hans said Herbert gave him a large sum of money which he hid under the rug. Herbert also gave him money to buy an automobile, and the son told him he did not believe it was advisable for him, Herbert, to buy a car, so Hans agreed to buy it for him.

Mr. Haupt told him his son told him he needed a car to get around in, to do the work he was supposed to do. At first Mr. Haupt tried to get him to use the old car but Herbert said it would not stand up under the strain.

Herbert told him the boy said he had intended to join the German army, but instead he had joined the sabotage school. Hans stated that Herbert told him after graduating the German Government gave him the money and sent him with seven other men over to this country on a submarine and that he landed on the coast of Florida and he asked him why he did not report Herbert and Hans said he did not turn his boy in because he was his own flesh and blood and because he was helping the fatherland.

1417 There are your motives for you. There are your motives for you.

All of these witnesses by their testimony have said that Erna Haupt was present at these conversations. We saw here yesterday a most interesting spectacle. Erna Haupt was placed upon the stand by the defense.

You know it is a rule of law that no cross-examination may be made upon any subject that is not gone into on direct.

The evidence had shown that Erna Haupt, according to this testimony was present at each one of these meetings.

Mr. BERTRAM. If the Court please, I object to the statement as improper argument.

Mr. FINN. Upon what ground?

Mr. BERTRAM. Talking about the rules of evidence.

The COURT. Overruled.

Mr. FINN. That is certainly——

The COURT. Overruled.

Mr. FINN. The evidence has shown that Erna Haupt was present at each one of these meetings.

Ladies and gentlemen, here is one person who would know all of these things, and they put her on the witness stand. Was there one word of denial on her part? Was she asked one question about what took place at these meetings? Was she asked one question as to whether or not Herbert Haupt had told on those four nights those various things that these witnesses have described? No.

Instead you saw the most palpable, the most patent, the most obvious appeal to your sympathy, and that was all.

Why, ladies and gentlemen, I think that is an insult to your intelligence, to the intelligence of this jury. I think that is an insult to the integrity of your minds. Do you not believe for one moment that if everything that was said was not true, that woman would not have denied it? Do you think for one moment——

Mr. WARNHOLTZ. Just a moment, counsel. I object to all of these inferences, because Erna Haupt today is under indictment together with her husband.

Mr. FINN. If she is a defendant in another case, what difference does that make, your Honor?

The COURT. Overruled.

Mr. FINN. What is the difference?

Mr. WARNHOLTZ. She need not testify against herself.

The COURT. Overruled.

Mr. BERTRAM. I object to that.

Mr. FINN. Ladies and gentlemen, if it were not true as we have alleged in the indictment that this boy was harbored in that home from June 19th to June 27th when he was picked up—if it were not true that they harbored and sheltered him in that home, then why did they not ask Erna Haupt about it? She was in the home. She was living there with her husband, and you know what her answer would have to be. Why, of course, the boy stayed there.

Of course, he told these various things at the meetings. Of course, they went down to buy the automobile for these reasons.

The defense knew at the time when Erna Haupt was upon the stand that the evidence had shown that that automobile was purchased for the purpose of assisting Herbert Haupt to get around——

Mr. BERTRAM. I object to that, no such evidence at all which counsel——

Mr. FINN. Of course there is.

Mr. BERTRAM. No; there is not.

1420 The COURT. Well, counsel has a right to draw reasonable inferences from the evidence. Objection overruled.

Mr. FINN. If it was not true that they did not purchase this automobile to assist Herbert Haupt, who would know it better than Mrs. Haupt? If it were not true that they had gone to the Grunaus for the purpose of getting a job and assisting in his mission here in this country who would know it better than Erna Haupt? Who would better know of all of these things and all of these acts than this woman, who is silent upon the witness stand?

Ladies and gentlemen you will never get more expressive evidence than that silence of Erna's, if you sat there for years. One more point along that line. You know that the evidence showed that on the 28th day of June, the day following, the Sunday after the boy had been arrested, they talked again about it.

1421 This man, this defendant, went over to meet a friend of his by the name of Carl Eggert. He met him in a tavern there. He said, "Carl, I got $900 of my own money that I would like to have you hold. The FBI are liable to get it, and it is my own money, and I want you to hold it for me," but Eggert, of course, was right on the spot. Pretty cunning, after all, isn't he? So Eggert says, "All right, I will hold it for you." And Haupt brings the money over to Eggert, $900; coincidentally in $50 bills; eighteen $50 bills.

Ladies and gentlemen, if Hans Haupt had $900, if he was in the habit of collecting $50 bills and had $900 of his own money, at that time, who would know it better than Erna Haupt? And who would claim if it was true, if that was so, who would claim that on the witness stand? Erna, of course. Was she asked about it? No. What other conclusion can you draw?

Now, let us take the chronology of these events just a moment, if we can. On Friday night, according to the admissions Haupt made to these four men, these various four people had met at Froehlings and went——

Mr. WARNHOLTZ. I object to that statement, "testified by four people."

1422 Mr. FINN. How many were there; three?

Mr. WARNHOLTZ. I do not know; not four, as stated by counsel. One, I believe.

Mr. FINN. Well, just to make sure Mr. Hirsh, testified——

Mr. WARNHOLTZ. Mister who?

Mr. FINN. Mr. Hirsh and Mr. Rode and Mr. Norris testified that one night they were together and his relations at the house, when they come in, he was scared and surprised because Herbie was there. That is the first night they were there.

Mr. Hamby testified that Haupt said that on Friday, June 19th, he got a telephone call to come over to Froehlings, so that there were four witnesses who testified to it, but at any rate, that meeting took place on Friday night. The next day Herbert wasn't seen around the house at all, and at 11 o'clock that night he went over to Wergins, and you remember Miss Demmler testified the manner in which the people tried to conceal the identity of Herbert Haupt in the early morning, at any rate, the next morning, when Grunau slept in the Froehling home. He gets up and finds Herbert Haupt in his bed. They were over at Wergins after 4, 4:15, according to Miss Demmler, evidently some time after that the
1423 boy was brought to the Froehling home that evening, and he stayed there most of the day. That evening, they had another meeting at the Froehling home in which Mr. Wergin and his wife again entered into the picture, and the Froehlings according to these admissions, that is, the Froehlings, according to the admissions, were afraid that the neighbors would be suspicious and moved the meeting over to Haupts. Now, the next morning, Herbert Haupt carried out his first assignment. He was told in Germany to report to the Draft Board and the FBI, so Herbert Haupt went down that morning, and he reported to the Selective Service Board, and he told Miss Gordon there he had been in Mexico mining gold. Was he abandoning his mission at that time? He went to the FBI, according to Mr. Greeg, and told the same story at that time. You will remember the testimony following that. The evidence by way of these admissions shows that the father had warned him there were agents that had been around the house, inquiring about his Selective Service Status, and he, Hans Haupt, had advised him to go to the FBI and to go to the Draft Board, to go to the agent's office, or at least down to the Government office.

Monday night, June 22, Herbert Haupt carried out his second assignment, that is, to get back in the optical industry.
1424 Hans and Erna Haupt took the boy to Grunau's home, and you will remember Herbert Haupt was driving, drove down about four blocks, then stopped, and Herbert Haupt got out of the car and went around to the side, and Hans Haupt, the father, switched positions with him, and he did the driving from

then on. And they drove over to Grunau's and there the young man applied for the job. They knew Koch, the foreman, in this plant, and they told him, in order to break the news to him, that Herbert Haupt may be coming to work within a few days. He had already applied to Mr. Grunau to come back that night.

And now Tuesday, Herbert Haupt starts to carry out his third assignment, namely, the purchase of this automobile. They were two purposes for that; one was so that they could get the explosives, which were buried on the beach in Florida, they were not doing any good down there, and the second was so that he would be able to travel around. So Hans Haupt goes down to the Warner Motor Sales, and they purchase an automobile. Hans takes the lead. Hans buys the car. Hans puts down the deposit. Hans signs the credit statement. Hans gives the reference, not
1425 the boy's references, but Hans Haupt's references, for that financial statement. Why? Why? Of course, so that the identity of the boy as a German agent will be concealed.

Now, I will prove that to you, I think, beyond a reasonable doubt within just a few moments. The next night, they again came around. There Hans Haupt signs the mortgage. Hans, I think, put down the $450, wasn't it, and signed an additional note for $50. Hans does all this. Now why does he do it? It is merely because he owes Herbert a car? The Defense claims that Hans Haupt owed his boy a car because Hans had taken over the boy's car when he left. Of course, that wouldn't be a defense, if he owed him ten cars; if he owed him ten cars and the boy came back, and Hans Haupt knew he was a German agent, it wouldn't make any difference. He furnished his car. He was still guilty of treason, because he knew he was a German agent and knowing that he helped him.

Now, let me see about this transaction, you will remember the gentlemen who testified by the names of Mr. Vinson and Mr. Farrell. There were three $50 bills put down by Hans; the price of the car was $1,045. I think Farrell said there was $5 put
1426 down for a half a year's license, the total price therefore is $1050.00. Later on in the week on Sunday, Hans Haupt shows up at Eggert's with $900 in $50 bills. That is the exact amount. $1,045 is the amount that Hans Haupt obligates himself to pay. He puts down $460, or whatever it is, and he obligates himself to pay up to $1,045 on that car. Here are three $50 bills, $900 in $50 bills, which shows up in Hans Haupt's possession at the end of the week. All right. Do you know what happened? This boy gave his father the money for that car. His father, in order to conceal his identity put this money down, put some money down and obligated himself to pay the rest of it, the full amount for the purchase of the car, which had been given him by Herbert.

What other explanation is there for the $900, or how else is the defense going to account for this $900? There isn't a scintilla of evidence that it is Hans Haupt's. Do you think that this man, who is a painter, who works so hard for his money, is in the habit of keeping $50 bills as souvenirs around his house?

Now there is another incident I want to discuss that I think is most significant—most significant, and particularly on the question of intent.

1427 I wonder if the Jury would like a rest for a few minutes, if the court please?

The COURT. Very well. We will take a recess, ladies and gentlemen.

(Thereupon a recess was had, and on the coming in of court after recess, the trial of this cause was resumed as follows, that is to say:)

The COURT. Proceed.

Mr. FINN. May it please the court, I should like to call to your consideration, particularly the evidence with reference to this Zerner incident on Tuesday night, because I think it is a matter of tremendous significance. I think that you could throw away out of this case entirely all of the evidence of the admissions that were made and still from that Zerner incident you would be forced to conclude that Hans Haupt knew what his boy was here for.

Now let us look at that evidence, if you will. Zerner was that little fellow whom we had to draw evidence out of, you remember, on the witness stand. I had to cross-examine him. He had been a friend of Haupt's for a number of years. He was also a German World War Veteran in the last war. Incidentally, I want

1428 to say this: You know I want you to understand, ladies and gentlemen, that this isn't a prosecution of this man, because he is a German, or of German descent, or anything of that character. I don't think there is anyone who has more admiration for the German people, as a people, than I have. German citizens coming to this country from the Old Country have settled here for years and years throughout the history of this nation. They have formed a part, and integral part of this community, fine hard working loyal Americans. So I want you to understand that that has nothing whatsoever to do with this situation, but Zerner was a member of this organization with Haupt, and a friend of his, and he used to come over there regularly. He lived within a few blocks, so he came over there regularly to Haupt's home. He happened to be there on Tuesday night. Now mind you, this wasn't a question of Haupt being afraid at that time that the FBI would know his son was back in the country, because

he hadn't registered for the draft. There was no such excuse, because Herbert has registered for the draft, had reported to the FBI on Monday, the day before, and you remember, there was a conversation at Grunau's house to that effect. The boy took out his card. The boy told Grunau he had gone to the Draft
1429 Board and registered. That he had been down to the FBI and everything was straightened out, so that Haupt at that time wasn't afraid for the boy because of his Selective Service status, but he told Zerner on that occasion he first asked Zerner what his address was, and he said, "You remember, it is 851 Fullerton," is what he said and then he said, "I want you to get a room for my boy over at your place." A rooming house. "I am afraid to have him around the house."

Now, you see the pressure was getting pretty great on Hans Haupt at that time, evidently, from these admissions, and I think it was Hamby or Norris, or one of them, I think it was Norris, the little fellow, said that Haupt told him the boy said he didn't intend to stay around the house very long. He had to get this car so that he could travel then he would be on his way, but the pressure was getting pretty hard and pretty heavy on Haupt at that time, so he was afraid to have him around the house. So he tried to get him a room over there. You remember, Zerner said, you will have to see the landlady, I have nothing to do with that, or something to that effect. Then Hans Haupt said "The
1430 boy is going to be travelling around. I want you to receive mail from him directed to us, receive the mail at your place and come over and bring it to our house."

Now, ladies and gentlemen, do you think for a moment that that is the action of a normal American father who is trying to aid his son because he is his son, or is that rather the action of a person who is actively giving aid and comfort to the enemies? I think that that incident is so tremendously significant, because it shows on its face that Hans Haupt knew that his son was a German Agent, and you cannot draw any other inference. Zerner was reluctant to give up that information, of course. He was a friend of Haupt's, and he was a co-patriot of Haupt's, and, of course, he was reluctant because it involved him also.

Now, the next night, Thursday night, if you remember, was the night the boy went over to the Vine Gardens there, and met Haas over there and tried to make contact for Kappe with a relative—Kauffmann in this country. On Saturday the boy was picked up at 908 Webster Avenue, at the L station. Saturday night was the meeting which has been testified to by these four people, through the admissions of Haupt. On Sunday Haupt goes
1431 over to the tavern and calls Eggert in the back room, and tells him about this money of "his own" that he has,

then later delivers it over there, Eggert keeping it in the meanwhile for him, and the money, of course is gotten by the FBI a few days later.

Now, so much for the chronology of these events that took place. Now, I want to deal for a moment with the overt acts that were involved here, and I want to be perfectly frank with you. It isn't the Government's position that we have proven all the overt acts by any means; some of them have been proven, but we haven't proven them all to the degree required by the Constitution.

The Court submitted to you twelve overt acts; overt acts of treason. The other acts the Court will instruct you, not having been proven to the required degree, that is, of two witnesses to the same overt act, the degree required by the Constitution, may not be considered by you as overt acts of treason; however, I wish you would take cognizance, if you will——

Mr. BIGGERAM. If the Court please, I think counsel is making statements here about the Court's instructions to the Jury, and I know and I feel that he is not giving the instruction the
1432 Court will. I think he is trespassing on your territory.

The COURT. No; I don't think he has as yet.

Mr. FINN. However, these other acts which were not submitted to you, and which were not proven to the degree required by the Constitution (two witnesses to the said overt act), may be considered by you, if you believe there is any evidence on them, it may be considered by you on the question of the intent with which any of those other acts may have been performed. Now, for example, the Zermer act that was testified to about the mail, in procuring the "mail drop" there for him, and the attempt to get the room for the boy was testified to by, of course, one witness, is not submitted to you as an overt act of treason. Yet I think you will agree with me, it is of the utmost significance in determining with what intent Hans Haupt may have performed other overt acts that are submitted to you. Is that perfectly clear? Now, of those which are submitted to you, I would like to deal with them for just a moment.

The first act which is submitted to you, I think, is number 10. That act alleges "that on or about the 22nd day of June 1942, Hans Haupt accompanied Herbert Haupt to the home of
1433 Andreas Conrad Grunau, for the purpose of assisting the said Herbert Haupt in securing employment so that the said enemy might conceal his identity and mission as an agent of the German Reich, and be permitted and enabled to carry out and pursue his said mission."

Have we proven that? Well, how many testified to that act? You have Mrs. Grunau, Mr. Grunau, Edith Grunau, and you

have, I think, four agents who followed him from their home out to the Grunau Home. The purpose with which he performed that act has been shown to you by admission made to four witnesses as well as by these other acts, such as the Zermer Act, which we know that Hans Haupt performed. From Grunau's he went to Koch's and that is covered by the testimony of the Kochs, and also the testimony of four or five or six agents; I don't know how many there were, who were following him.

The next act is number 12: "That on or about June 22, 1942, said Hans Max Haupt harbored and sheltered the said enemy Herbert Haupt at the home of Hans Max Haupt and Erna Haupt, etc."

1434 With reference to harboring, I would like to refer you to all of these harboring situations, those overt acts are number 12, and overt act number 17, and overt act number 20, and overt act number 21 and 22 and 23. Each of those I have enumerated, allege a haboring of Haupt on a separate day.

Now, you may have wondered why all these men, these agents, witnesses to this surveillance were put on, but you should keep in mind we must have two witnesses to each act of harboring. I am not going to go through all of this. I will just take a few of these, as for example, and go through them.

At 12:25 P. M. on the 22nd, Herbert Haupt entered 2234 North Fremont Street. He came from the Draft Board. He was seen entering by Handley and Dixon.

At 4:50 he was seen by Handley and Dixon entering the premises. At 4:50 he left the premises at 2234 Fremont Street.

At 5:15 he came in again. At 7:30 he went out again with Hans and Erna. They went to Grunau's and the Koch's, as has been testified to. Then they went from Grunau's to Koch's. Then they came home at 10:50. Herbert Haupt arrived, Herbert and Erna, and Hans went down and parked his car.

1435 Now, we get to the 23rd, Herbert and Erna at 12:20 left 2234 and were seen by Lynch, Fletcher, Meach, and Dixon who testified to that. Erna went downtown. Herbert went over to the plymouth Motors, and at 5:15 Herbert entered 2234 North Frement Street. At 6 P. M. he went out again with Herbert and Erna and Hans left 2234 North Fremont, and went into a restaurant, Wagner's Restaurant. Then Herbert and Hans were later followed by all these agents, and they came back. That was the time, you remember, Herbert walked up and down the corner, then went in and had a glass of beer, stopped at the tavern for twenty-five minutes and then came back. That was the evening he was seen around the flat by Lynch, Dixon, Schneider, and Meech. He was also observed by Zermer and Melind in the house.

At 10:15 he came out, with Miss Melind. He got back at 12:05 A. M. or 12:30 A. M. that morning.

On the 24th he entered at 12:30 A. M., and was seen by Meech, Schneider, Dixon, Lynch, and Lewis.

He came out again at 7:05, and was seen at that time by several agents also; when that was—well, it was at Eggert's, perhaps I am mistaken on that, but at one o'clock he was seen
1436 by Meech, Lynch and he came out again at 5:31, and was seen by Mr. Berg.

At 6 p. m. he went out again. Hans went to the Warner Motor Sales again, where, of course, they were followed by these numerous agents.

At 6:45, Herbert came out of 2831 North Fremont. Let me see. 6:30 he went in again, and 10 minutes later came out again, and they went to the Vine Gardens and the Blue Danube Cafe. I am not going through all of this. You will recollect where they were on each day this boy came in and out of those premises.

Now, we have proven beyond a possibility of a doubt that the only place he could have gone was the home of Haupt's.

The Kluczyks testified Herbert was only at their house one evening. He came too, and the father and mother, they stepped to the door a moment, and Erna said he was in a hurry, that they had to go to Grunau's. He never went into Probst's. They testified he was never in their apartment. Kluczyks testified this front entrance served only the three front apartments, and you couldn't get down into the basement except by going through Kluczyk's apartment and no one did that, nor could any-
1437 one get through to the back. The only place Herbert Haupt could be, was in the home of his parents. In addition, to that, the agents saw him on numerous occasions when he went in there, and the lights of the apartment went on and off again.

By checking the record, the evidence shows that from Monday noon, when he first was seen coming out of that house until 9:05 a. m. on Saturday, Herbert Haupt was seen going into the premises, thirteen times, and was seen going out of the premises fourteen times, being a total of twenty-seven times in and out that this boy was seen around that building.

Now, Mr. Warnholtz in his opening statement, told you that the evidence would only show that this boy was there on one occasion for a short time and was seen on the sidewalk on one other occasion. Now, is that true, after all this evidence is in? Was that statement anywhere near correct? Can anybody with a sane mind come to any other conclusion but what that boy was harbored in this place every day that we have alleged in this indictment?

Now, with reference to the other overt acts which we claim were proven, and mind you, we only have to prove one by two witnesses.

Number 13 alleges that on that date, June 23rd, Hans
1438 Haupt accompanied by the said enemy, Herbert Haupt, went to the Warner Motor Sales to arrange for the purchase of an automobile for the said enemy, Herbert Haupt, for the purpose and intent of assisting the said enemy in carrying out his mission as an agent of the Government of the German Reich aforesaid. All right, we have discussed the purpose before. The two witnesses in the record, were Mr. Farrell and Mr. Vinson who testified without equivocation as well as the agents who followed them.

The next act submitted was on the evening of the 23d at the Warner Motor Sales, where Hans Haupt signed a financial statement and order for the purchase of an automobile. And the financial statement, the order blank is here in evidence. The evidence you heard both from Farrell and Vinson, who testified the money was laid down by Hans Haupt. The reason given for that act, has been proven without equivocation, without a question of doubt.

The next act on this subject alleges that on June the 23d, the next night, Hans Haupt again accompanied the enemy Herbert Haupt, to the Warner Motor Sales to complete the arrangements for the purchase of an automobile for the said enemy, with the intent and purpose of assisting said enemy in carrying out
1439 his mission as an agent; of the Government of the German Reich. That also has been proven. On every occasion when he went down to the Warner Motor Sales, he was followed by at least four agents. This thing we have proven beyond any question as required by the constitutional degree. I don't think there will be any question under the evidence.

Now, let us take this one more subject, that is the question of the intent, because without treasonable intent, there would be no conviction for treason. We were permitted by the court to introduce into evidence in this case certain testimony on the question of intent, statements that were made by this defendant from, I think it was, 1936, or 1937, was the first one of them, up until the time of the bringing of the indictment; even after that. These statements in and of themselves are not treason, and don't make any mistake about that. We don't claim that. A person has a right, certainly, when it is not wartime, to speak their mind, to say what they think. That is all right. That is legal. But you also have a right to consider these statements on the question of intent with which these various submitted acts were performed. You have a right to consider these statements in determining

1440 with what purpose, with what intent Hans Haupt did these overt acts.

Now, what do these statements show? Do they reveal a picture of a good loyal American? A man, who although he loves his son, wouldn't do anything to aid Germany, or to hurt the United States? Do they show he is that kind of a man? Oh, no. They show you a picture of a most vitriolic out-spoken Nazi; they show you a picture of a man whose allegiance to this country meant nothing to him, who never intended to remain here; who, in his every utterance expressed his venom and hatred against this country, and his love for the Vaterland.

Just look at some of the statements made, for instance, by Willie Schroeder. In 1937, Hans Haupt said, "We need a man like Hitler here to build up this country, like it was built up over there. He would chase the Jews out of here like he did in Germany."

Well, that may be legal, but it shows what kind of a picture, what kind of a mind this fellow has.

He also said, "Before I would send Herbert over to Germany to fight against Germany, I would kill him myself."

1441 A fine picture of true Americanism, isn't it? Then we have Mr. Poppe, who testified he saw Hans frequently at meetings of the German World War Veterans Association, from 1936 to 1940.

In July 1939, Hans said: "Herbert was going to leave for the Bund Camp in Michigan for a week or ten days." He also said on several occasions he took the boys and Herbert to this Camp in Michigan.

Here he is, allowing this boy to grow up as a German in our very midst.

In the summer of 1936, Hans said: "If war would break with the United States and Germany, he would never permit his boy to join the American Army. He would send him to Mexico, and from there he could go to Germany and join the German Air Forces."

He also said: "If war broke out, and he was taken in the Army, he would crawl over the enemy lines and tell them our position."

Well, he didn't do that exactly, but he sent his boy on a mission of the same kind and character, and when he came back, he did everything he could do to help him.

He also said: "He had no feeling for the United States. His feelings were only for Germany. He wished Hitler would come over here and drive the Jews out, because the Jews are running the country."

1442 Take him down through 1937, 1938, and 1939, these people that worked with this man, mind you, were of the same nationality he is, Willie Schroeder, who is a veteran of the

World War, too, and they are coming in and testifying against him to these things. This man worked from February 1940 to March 1941, for the Fishman's. He lived out on the Fishman premises.

In the summer of 1940, his boy used to go up to the Bund Camp in Michigan every week end, and when Mrs. Fishman questioned him about that procedure, whether that was a good thing to do for the boy, he told her it was the proper thing for German people, who were really Germans, to send their children there to raise them like that.

Ladies and gentlemen of the Jury: Is it any wonder that this boy turned out to be a spy and a renegade, living in an atmosphere of that character?

In 1940, in the summer, Mr. Haupt said: "If we entered the war against Germany, we were going to have a revolution in this country, because our utilities and armories and telephone companies would be taken over by people belonging to German organizations he belonged to."

1443 Now, ladies and gentlemen, what do you think was this man's intent? What kind of a person was he? You, yourself, have the record complete before you, and you can judge now. What did they put up by way of defense in this case?

Well, there was a witness by the name of Peter Wolf, and one by the name of Nolan, and one by the name of Sausen, and one man Graf, and a man by the name of Schoenfeld. Four of them testified that Hans Haupt worked doing those various jobs. What difference would that make? We don't claim he didn't work at his job. That has nothing whatever to do with the issues in this case. That didn't prevent him going out to buy a car in the night time. It couldn't prevent him at other times from trying to get a mail drop for this boy. Mr. Schoenfeld testified something about a check for $101 cashed for Hans Haupt on Saturday. What difference would that make? Would that explain how this fellow got $900 in eighteen $50 bills? What kind of a defense do you think that is? Miss Melind testified that on one occasion in 1940, I think it was, Mrs. Haupt had come back from Germany and she said, "She was glad to be back." And Mr. Haupt said,

1444 "well, there is no place like home. Now, for heaven's sake, they have a right to show that Hans Haupt was a good American. They have just as much right to bring in a string of witnesses and put them on the stand, and have them testify to things of an American patriotic nature, that this man had done, and all they could say was, "There is no place like home." Why it is ridiculous; just ridiculous. Then as I said before, we had the most palable and most obvious attempt to reach into your hearts and have you decide this case on sympathy, that I have ever seen.

This woman, Mrs. Haupt, testified to nothing. We were perfectly willing to admit and stipulate that the boy died whatever date they said he died, and so, instead of going into the things Haupt was charged with, that she knew of in this case, they merely put her on the stand and tried to introduce a letter that was sent by a Chaplain; isn't that the most obvious attempt to get you to decide this case on sympathy that you will ever see? I think it is an insult to your intelligence. I think it is an insult to the intelligence of this Jury to present evidence of that character to them.

Now, just a word in closing. Now, just a summary, ladies and gentlemen. I think that we have proven beyond all
1445 possibility of a doubt, first, that Herbert Haupt was an enemy agent, and that he came here on a mission for the German Government, and was acting as a German Agent while he was here. I say that we have proved beyond a reasonable doubt, beyond the possibility of a doubt that Hans Haupt knew that he was a German agent.

I say that we have proved beyond a possibility of a doubt that, with that knowledge in his mind Hans Haupt committed any number of overt acts which were submitted to you and proven by the required number of witnesses. These facts have all been marshalled before you.

Ladies and Gentlemen, I don't have to remind you that we are at war. Your obligation is clear. The young men of our nation are spread throughout the world, on the battlefields of the world and——

Mr. BERTRAM. If the court please, I object to appealing to the passion and emotional appeal.

Mr. FINN. Your Honor, I think this is serious enough. We are at war, and I have a right to argue this matter.

Mr. BERTRAM. I object to the further remark.

1446 The COURT. Well, we are at war. The question is whether this defendant committed treason by adhering to the enemy and giving them aid and comfort.

Mr. FINN. Ladies and gentlemen, not only have soldiers military duties to perform, but you also have duties to perform, and where the evidence as in this case clearly and unerringly points to the guilt of this man, I say it would be a shame to permit your sympathies which were appealed to so obviously in this case to sway you from the duty which you swore to uphold at the beginning of this case.

At the beginning of this case you promised us then that if we proved to you beyond a reasonable doubt the issues that were necessary in this case that you would decide this matter without prejudice, without feeling and without bias, and on the facts, and we are confident that having done that, you will now fulfill your

duty and obligation as jurors and as citizens of the United States.

The Court. We will adjourn at this time, ladies and gentlemen, until 10:00 o'clock tomorrow morning.

In the meantime, do not discuss this case with anyone. Do not permit anyone to discuss it with you. I suggested to you at the beginning of this case you should not read any news printed about it. I again enjoin upon you you do that.

1447 If anyone attempts to communicate with you about the case, refer that back at once to the court.

One of the reasons I don't want you to read about this case is this: You will be glad if you don't. I told you at the beginning you will be glad if you don't read about this case.

When you go to your jury room you want to perform your duty in accordance to what you found, not confusing yourself reading about this case. You may be able to do that duty, so don't read about the case over night and come here tomorrow morning and we hope to conclude the case in the morning. At 10 o'clock tomorrow morning.

(Thereupon an adjournment was had to Wednesday, June 7, 1944, at 10 o'clock A. M.)

* * * * *

1448 In the District Court of the United States for the Northern District of Illinois, Eastern Division, at Chicago

UNITED STATES OF AMERICA

vs.

HANS MAX HAUPT

Before Hon. JOHN P. BARNES, Judge and a Jury

Wednesday, June 7, 1944, 10:00 o'clock A. M.

Parties met pursuant to an adjournment.

Counsel present: Mr. J. Albert Woll, United States District Attorney for the Northern District of Illinois, Eastern Division, at Chicago, and Mr. Earle C. Hurley, and Mr. Richard G. Finn, Assistant United States District Attorneys for the Northern District of Illinois, Eastern Division, at Chicago, appeared for the United States of America; Messrs. Paul A. F. Warnholtz, Frederick J. Bertram, appeared for the Defendant.

* * * * *

1449 Thereupon the following proceedings were had in the courtroom outside the presence and hearing of the Jury:

Mr. HURLEY. If the court please, on the opening of this trial there was some discussion about Mr. Bertram not appearing of record. I would like to have the record straight on that matter. I believe, to participate, which, of course, that extent is shown by the record. And he is continually referring counsel to the statute and has taken a most active part in this defense. I don't think there is any distinction between this case on trial here now and I hear now that he intends to argue the matter, and I think his appearance should be a matter of record.

The COURT. What do you say?

Mr. BERTRAM. If your Honor thinks I should enter my appearance, I would not want to have any responsibility in this case beyond the present trial; that is, beyond the argument to the Jury, although I may in the future also help Mr. Warnholtz. If the Court thinks I should file an appearance—

The COURT. The only responsibility I have is what transpires in this courtroom. I think you should enter your appearance for that purpose.

Mr. BERTRAM. I will do so. May I do so during the course of the day?

Mr. HURLEY. That will be the start of the trial; not showing it is entered now.

Mr. BERTRAM. I don't suppose it makes any difference.

The COURT. You might file your appearance as of the time the trial started.

Mr. BERTRAM. Put that into the record.

The COURT. Yes. Will you step into the Court's chambers a moment, gentlemen?

(Thereupon the following proceedings were had in the Court's chambers, outside the presence and hearing of the Jury:)

The COURT. In order that the issues submitted to the Jury may be clear, I am going to attach this by a clip to the indictment when it goes to the Jury and they retire to consider the case, this sheet of paper, to which I referred yesterday and of which I hand you each copies, and the reporter may copy it into the record, and then you may hand that back to me after you copy it, Mr. Reporter.

"In accordance with the instructions of the court heretofore given you, there are withdrawn from your consideration, as possible overt acts of treason, the following alleged acts charged in the indictment.

"Overt acts numbered 1 to 9, both inclusive.

"Overt acts numbered 18 and 19; and overt acts numbered 24 to 29, both inclusive.

"And that there are submitted for your consideration, as possible overt acts of treason, the following alleged acts charged in the indictment.

"Overt acts numbered 10 to 17, both inclusive.

"And overt acts numbered 20 to 23, both inclusive."

I am also going to send to the Jury, after instructing the Jury orally, I am going to send to the Jury the typewritten instructions from which I shall read, and the forms which I gave you have been corrected in accordance with the suggestions which the Court adopted at our conference of yesterday, and in addition to the instructions concerning all the instructions on which we conferred yesterday, I have added an additional instruction, and inserted it as number 64, and that moved up the numbers of the last three instructions.

1452 64 reads as follows: Just a minute. The forms of instructions have been rewritten, all of them except pages 1, 2, 3, and 14. All except pages 1, 2, 3, and 14 were rewritten, and I am handing you copies of all of the pages which have been rewritten, so that you may use the forms which you already have and make exact copies of the instructions which the court is going to read.

Now, instruction number 64, which I have inserted, reads as follows:

"The task which is imposed upon you is one which should be performed by your intellects and should not be attempted to be performed by your emotions. The psychologists tell us, as you know, that our minds are made up of two parts, our intellects and our emotions. Our intellects are those parts of our minds whereby we reason. Our emotions are those parts of our minds which generate hate, prejudice, sympathy, pity, and like feelings. The task which now confronts you as jurymen and women cannot and should not be attempted to be performed by your emotions.

1453 If you attempt to use your emotions to decide this case, you will probably make a mistake. If you use your intellects, as you should, the possibilities of your making a mistake are minimized. Furthermore, if you attempt by your verdict to decide some question other than that submitted to you by the court, you will probably make a mistake. While if you decide by your verdict only the questions submitted to you by the court, the possibilities of your making a mistake are minimized.

The question of the possible punishment of the defendant in the event of a conviction is not a matter for the jury to consider, and should not in any way enter into your deliberations. The duty of imposing sentence on a defendant rests solely upon the court, who tries to perform it fairly, and with due consideration for all the circumstances. The function of the jury is to weigh all the evidence and determine the guilt or innocence of the defendant solely from that evidence".

Mr. WOLL. If I understand it, we have about forty-minutes left; is that right?

The COURT. I can tell you by looking in my book. I can tell you when we get back to the courtroom.

1454 You will observe that in the place reserved for the insertion of the overt acts, in the place reserved in the form instructions for the overt acts, I have inserted, twelve statements of twelve overt acts submitted to the Jury.

Mr. HURLEY. That is right.

The COURT. I will tell you how much time you have left.

The pages which are not rewritten, you will note, are 1, 2, 3, and 11.

Anything further now before we go in the courtroom?

Mr. WARNHOLTZ. No.

Mr. WOLL. No; if your Honor please.

(Thereupon the following proceedings were had in the courtroom outside the presence and hearing of the Jury:)

The COURT. Mr. Finn concluded about 4:25, wasn't it?

Mr. FINN. Between that time and 4:30.

The COURT. He started at 2:57, and it shows about eighteen minutes and then thirty minutes; one hour and forty-eight minutes. He has about forty-two minutes, I guess.

1455 Mr. WOLL. All right. Thank you.

The COURT. Yes. You may bring in the Jury.

(Thereupon the following proceedings were had in the courtroom in the presence and hearing of the Jury:)

Mr. WOLL. Good morning, ladies and gentlemen.

Mr. WARNHOLTZ. Good morning.

The JURY. Good morning.

The COURT. Good morning, ladies and gentlemen.

The JURY. Good morning, Judge.

The COURT. Will you proceed, counsel?

Closing argument by Mr. Bertram

Mr. BERTRAM. May it please the court, your Honor, Judge Barnes.

The COURT. Mr. Bertram.

Mr. BERTRAM. And counsel for the prosecution, and ladies and gentlemen of the jury:

I have never had a case where the life and liberty of a man depended in any way, or to any extent upon my poor ability. I have had no criminal practice or experience in defending criminal cases. I trust I will say nothing that will irritate you, ladies and gentlemen, and that you will, as you promised, not permit

1456 the personalities of counsel on either side to interfere with or prevent you from giving the defendant a fair trial.

Please forgive my nervousness and any shuffling of papers, because I will have to consult my notes in making this argument. I do not know how an experienced criminal attorney would argue this case to a Jury, but I will discuss it with you as I would in discussing it with you each one individually. That is the only way I know how.

First, I would like to reply to the arguments made by Mr. Finn on yesterday or as much of it as I can remember. In reply to Mr. Finn I desire to say that the defense does join with him in thanking the Jury for your attention and for bearing up under the hot weather and the strain of this trial--and it has been a strain upon all of us.

In his opening remarks Mr. Finn declared that the prosecution wanted you to decide this case without prejudice or bias, and to decide it on the basis of fairness and also that if the Government did not prove, beyond a reasonable doubt, that the defendant was guilty of treason in this case, that it was your duty to find the defendant Not Guilty. That is the law, and that is your duty as we all know, but I was sorry to see that soon after he made
1457 this statement, Mr. Finn apparently forgot all about it, and began to appeal to prejudice and passion and emotion.

I urge you not to let prejudice or passion or unfairness interfere or prevent you from giving this defendant a fair trial, and justice, uninfluenced by prejudice of war emotions, all of which you have pledged to do.

I hope I will say nothing that is unfair and nothing that will create prejudice of unfairness, and I hope I will keep that resolve better than Mr. Finn did, in my opinion.

Mr. Finn said, according to my notes, "It is not treason to aid a son. The gist of the crime is that Hans Haupt knew that Herbert was a German agent." That is Mr. Finn's statement. I agree it is not treason to aid a son, but it is not true that the gist of the crime of treason is that Hans Haupt is claimed to have known Herbert was a German agent. That is not the law. The gist of the crime of treason is First, an overt act, and Second, a treasonable intent. Meaning that the person that committed that particular act had an intent to commit treason in so doing. It
1458 seems that the Government's attorneys would have you believe that treason is about as comprehensive and abroad and loos as the charge of disorderly conduct which is the common catch-all for all acts of minor misconduct. I will come back to that later.

Mr. Finn gave you the following example of what is supposed to be the theory of the defense in this case. Apparently his purpose was to ridicule the defense. According to Mr. Finn, the father is supposed to say, "I don't want to injure America, but

I will do these things for you as my son; I will help you blow up bridges, but I will do this for you as my son, therefore, I will not be guilty of treason."

Nothing could be further from the fact. There are no charges of blowing up bridges. The twelve overt acts and all of the twenty-nine original overt acts, there are only twelve that are being submitted to the Jury, but all of the twenty-nine overt acts in the indictment do not charge anything like that against Hans Haupt. He is charged with sheltering Herbert, with visiting friends, with buying an automobile, and other similar acts, all lawful and innocent in themselves. If the defendant did these acts which are stated without any intent to injure the United States, or to
1459 aid an enemy, then it is not treason, and that is all there is to it.

Mr. Finn's next statement was this, according to my notes: "Herbert was brought up to be a Nazi and when men of our country were sent to the colors, Herbert went away on a vacation."

Those were Mr. Finn's words. I made a note of them. Ladies and gentlemen, we were not at war in June 1941, when Herbert went away. Another statement Mr. Finn referred to was rifles cached; no rifles were cached or hidden in Mrs. Fishman's garage. That was the home of the Haupts, Erna and the defendant Hans Haupt, and you know that every man has a right to keep firearms in his home; that is one of our constitutional privileges and on the Warnecke farm there was nothing hidden. There was no evidence of anything hidden there. Many of us have had rifles and have gone to a shooting range or out in the country or to a farm to hunt. This is just an illustration as to how each of these little things are given a sinister meaning by the prosecution in this case. All of the little scraps of petty, trivial occurrences supposed to have occurred during the boyhood of Herbert Haupt are assembled by the prosecution and thrown at his father on his trial for
1460 treason, and yet Mr. Finn says he would not appeal to prejudice.

Mr. Finn asked you about the evidence for the defense in this case. What difference does it make, says he, if the evidence shows that Hans Haupt worked every day, even on Sunday, at his trade as a painter and decorator and bricklayer during the eight days of time that Herbert Haupt was in Chicago after his return from Germany. I will answer Mr. Finn.

It shows that Hans Haupt was working hard to support his family and his time was occupied and that he was not plotting to blow up bridges or do any harm to the United States, and again Mr. Finn asked you, "Does that explain how Hans Haupt got the $900, which he told Mr. Eggert was his own money?" I will ask Mr. Finn, "Don't we all get the money by working for it?"

The only evidence in this case is that it was the money of Hans Haupt. This particular overt act was withdrawn from the case, gentlemen and ladies—I am sorry, I should say, ladies and gentlemen.

Next Mr. Finn stated, "Hans and Erna Haupt took Herbert to Grunau's home, and Herbert there applied for a job"—Herbert applied for a job. I ask, is that act an act inconsistent with
1461 the innocence of Hans Haupt? The unfortunate person who is charged with treason, is under suspicion, on every act he does, no matter how innocent it is. If Mr. Haupt would go out, or did go out, and bought his own son a razor on June 19, 1942, with which to shave himself, I suppose he would be charged with treason for that. Oh, my good people, we have not come to the point where anything and everything that an accused person may do, is treason, nor is it regarded as treason.

Next, Mr. Finn stresses the Zermer incident, as he called it. You will remember when Mr. Zermer first told you that Hans Haupt—you will remember, ladies and gentlemen, that Mr. Zermer first testified here, and told you Hans Haupt told him—now, these are Hans Haupt words, as Mr. Zermer told him on his examination, as Mr. Zermer testified on his examination. He says, "Mr. Zermer said, Hans said, we have no room for Herbert Haupt, only one bedroom; can he get a room in this rooming house?" Then you will remember that Mr. Zermer testified nothing further was said. He was asked again and again by Mr.—I think it was Mr. Woll, or perhaps Mr. Finn, who was examining him on direct examination—he was their witness, ladies and gentlemen. He was asked again and again. He said nothing further was said, nothing
1462 further was said he had it—He did not tell you then that Hans Haupt said, "I am scared to have Herbert Haupt around here." You heard also Mr. Zermer's testimony, which was read to you to save time, and because it had been testified to while you were in the anteroom and the court was deciding whether or not it was competent and proper for you to hear it; you heard the court reporter read to you the Zermer testimony that he was threatened by the FBI and thought that he would lose his citizenship papers. You heard how he testified he was kept in custody for three days under constant interrogation by three FBI agents, and how they took his clothes away. Kept him locked up for three nights and three days and after getting statements from him in writing, that no one can doubt were abstracted from him in his confusion and fear, and then be brought before the Grand Jury, and then he is read to from the statement by counsel for the prosecution from the record, and he says, "Yes," he made that statement. What else could he do? Although you could see plainly that he was utterly confused, he was still utterly confused when he was on

this witness stand, and that he had no recollection whatsoever of any such conversation with Hans Haupt. He told you so, first and last, and all they could get him to say was "Yes." That was "Yes, that statement I made." I ask you, ladies and gentlemen, is that evidence to be regarded as evidence beyond a reasonable doubt?

Now I call your attention further to the fact that the Kerner overt act has been withdrawn in this case.

Mr. Finn made another statement, and I shall comment on what Mr. Finn said: "We have circumstantial evidence of sheltering Herbert; that he was seen going in and out of the entrance of the building."

I wish to state here and now, ladies and gentlemen of the Jury, that circumstantial evidence, no matter how strong, cannot take the place of a witness to overt acts.

Mr. WOLL. If your Honor please, I am going to object to this line of argument.

Mr. BERTRAM. As required by the constitution.

Mr. WOLL. On statements not made by Mr. Finn; that the statements that are made is an attempt to build up something by way of argument, which isn't here before the Jury.

Mr. BERTRAM. Well, I made notes on it, and that is the way my notes show it.

The COURT. The Jury will remember what was said. I do not remember it exactly.

Mr. BERTRAM. Ladies and gentlemen, it is the defendant's right to be entitled to the protection of the provisions of the Constitution of the United States, and it is my duty to urge it on his behalf.

Now, the last statement which Mr. Finn made, which I shall comment on, is a statement as follows: "The question here is the question of intent, because without treasonable intent, there can be no treason."

On this statement, I agree wholeheartedly with Mr. Finn, because that is the law, and it is on that point, that the defendant here is entitled to your verdict of Not Guilty.

There have been few treason trials in the history of the United States, still fewer convictions of treason. This present case, rather, the former trial was the first case in Illinois on treason. I have never heard in the history of England or the United States of a treason case against a father for giving aid and comfort to his own son.

Treason is the greatest of crimes with which a man can be charged with. You might have supposed before this trial began from the very magnitude of the crime charged, that the evidence would show that this defendant had done some

great injury to the United States; that he had blown up bridges or factories or had done some other act of violence against our country, but no—the charges against the defendant here are acts which you and I do in the ordinary course of life. Shall I name some of them?

Giving food and comfort or shelter to our children. Purchasing an automobile for our own son. Talking and visiting with a member of one's own family, and visiting the friends in company with their children.

Now, just to confirm that, ladies and gentlemen, what are the horrible acts of treason in the indictment, charged in the indictment? I tell you, ladies and gentlemen, that they are neither horrible nor are they treasonable. Let us read: "First, overt act number 12. Said Hans Haupt on or about June 22, 1942, harbored and sheltered the said enemy, Herbert Haupt, at the home of Hans Max Haupt and Erna Haupt at 2234 North Fremont Street, Chicago, Illinois, well knowing that the said enemy was an agent of the Government of the German Reich in the United
1466 States, to commit a saboteur act as a spy and perform other services for said government as aforesaid, or with the intent and for the purpose of assisting said enemy Herbert Haupt in carrying out his mission as an agent of the Government of the German Reich as aforesaid."

When the Constitution of the United States was written and adopted by the thirteen colonies, after winning the Revolutionary War, our founding fathers were extremely aware of the abuse to which prosecution for the crime of treason was subject.

In the various struggles for the possession of the crown to the throne of England, the charge of treason was made use of by the successful aspirant to the throne to dispose of his defeated rivals by a charge of treason and execution. In Colonial days before the Revolutionary War there were likewise many abuses in making and prosecuting the charge of treason against our Colonial Americans, and so our forefathers were keenly conscious of the abuses and of the necessity for placing safeguards in the Constitution itself, regarding the prosecution of this crime of treason. It was never intended that the crime of treason should be extended by construction or by the theory of constructive treason used in England. That was never adopted or applied in the United States.

1467 It was never intended that the prosecution for the crime of treason should be broadened beyond the limits set in the Constitution.

I do not believe that anyone ever conceived that a father might be charged with treason for giving food or shelter to his own son, or even for concealing and sheltering his son from arrest.

"Once disregard these exceptions and render the constitutional rule as flexible or comprehensive as it is now suggested to be, and prosecutions for treason may become as common as indictments for petit larcenies, assaults and batteries, or other misdemeanors. None of us can feel any ambition to leading the way in setting a precedent so dangerous or one that will in any degree tend to demolish that barrier which has been raised by the Constitution against constructive Treasons."

Those are not my poor words; those are the words of a learned Judge. I use them, because they are more eloquent than my own could be.

Ladies and gentlemen, much of the evidence in this case needs no comment or denial from the defense. Dozens of FBI agents, and when I say FBI agents, I mean, of course, Federal Bureau of Investigation men. We use that term merely because
1468 it is short and easy to say. Dozens of FBI agents have testified here concerning the movements of Herbert Haupt—Herbert from the time of his arrival in Chicago until the day of his arrest eight days later.

We were pleased to have this evidence. Indeed we regarded it as favorable to the accused, because it shows beyond the slightest doubt that Herbert did not commit any act of sabotage after his arrival in Chicago, and it showed further that the defendant Hans Haupt never committed any act of sabotage at any time. It is not even claimed by the Government that Hans Haupt ever did anything other than the list of so-called overt acts which are mentioned in the indictment. Every one of which acts any father might do for his son in the ordinary course of the affairs of life, but the charge here is that he did these ordinary acts of life with the intention of committing treason.

It occurs to me that I, myself, or most any other person might be charged with committing some overt act of every day life, and then be charged with doing that act with treasonable intent.

Oh, yes, they could review my whole life history and every
1469 foolish hasty statement that I ever made regarding the war or regarding events happening before the war can be thrown at me, to show that I entertained treasonable intent, which otherwise would have been an innocent act.

For Herbert Haupt, I have no need to undertake to defend him, or his action. I do not defend him. He has suffered the supreme penalty for his misdeeds. Whether or not he would have pursued his mission and destroyed property in the United States will perhaps never be known. It is a secret that is buried with his body. We know from the Government's evidence, the Government's witnesses, that Herbert Haupt violated his instructions in visiting his parents in Chicago.

The Government's witness, Ernest Peter Berger, made some statements which I thought were very significant at the time I heard them. He maintained that he, Berger, was a German soldier, and that the others were not soldiers, but were given contracts for hire. Perhaps you recall the contempt that he showed for the men who were under contract. And then he said, as you will perhaps well remember, A German soldier never forgets an order. It appeared from his testimony to me at least that he held Herbert in great contempt. He talked about Herbert dancing
1470 and girls. He wasn't like Herbert, and that Herbert had disobeyed orders, and that Herbert may have deserted his companions.

But, ladies and gentlemen, the defendant, Hans Max Haupt is not on trial for the crimes of Herbert Haupt. In the United States we do not punish parents for the crimes of their children. The defendant in this case can only be tried for his own acts and deeds and not for the acts of anyone else; not for Herbert's acts; not for Froehling's acts; nor Wergin's acts; nor even for the acts of his own wife.

Now it is necessary in this case, at least, by virtue of the provisions of the Constitution of the United States itself, not only that the prosecution must establish beyond a reasonable doubt that the defendant did not one or more of the overt acts charged in the indictment, but the prosecution must prove by two witnesses who were present that such act was actually done by the defendant at the time and place mentioned in the indictment. Over and beyond this the prosecution must prove, ladies and gentlemen, beyond a reasonable doubt, that Hans Haupt did that particular act with the intent to commit treason against the United States.

1471 What is the character of the evidence offered by the prosecution to establish an alleged treasonable intent on the part of the defendant? I feel certain that you cannot examine such evidence without entertaining a reasonable doubt, providing that you do so with a fair and unprejudiced mind.

The evidence come mainly, if not entirely, upon this point from hardened habitual criminals, who had been violators of the law since their 18th birthday, if not even before that. Their first conviction for felonies, it seems, in both cases, began with their 18th birthdays. They have told you amazing stories of their habits in beating raps and advising others what to do, their knowledge of legal terms, and legal procedure in criminal cases. I am not going to pass judgment upon these men or condemn either of them. God only knows their full stories. We know that most of their lives, even, were spent behind iron bars. They may be stir crazy, or they may be psychopathic liars. You may, from your own

experience, know of cases of psychopathic lying in children, in adults with infantile minds, in adults with twisted minds and mental complexes. A man who is a habitual criminal and
1472 commits crimes all of his adult life, perhaps in childhood, there must be something wrong with him. He must have a twisted mind. There is some complex there. I have said I would not pass judgment upon these criminals for the law has passed judgment upon them, not once, but several times. And it is the rule and safeguard of all courts of justice that the testimony of convicted criminals must be regarded with caution and with due regard for the source from whence it come.

I have a right to—and I am going to discuss that testimony with you from the standpoint of whether or not it can be accepted as proof beyond a reasonable doubt.

Would you be willing to dispose of the life and liberty of a human being upon the basis of the testimony of convicted criminals? It is not a matter of condemning these men. It is a matter of using their testimony to convict a human being. Let us examine some of the statements of these men. They talked glibly, and knowingly, of such technical, legal terms as accessory and accessories after the fact. I have no doubt that they know what these terms mean, but how many first offenders or people of no experience with the law, would know what these terms
1473 mean? You will recall that both of these witnesses testified that when the witness Hamby, one of the convicted criminals, thrice convicted, when he asked Hans Max Haupt, "What are you in jail for?" And Hans is supposed to have replied, "I am an accessory to my son Herbert."

Ladies and gentlemen, I assure you that this foreign-born defendant never before heard that term and he never made such a statement. He never had committed any offense before in his life, and as far as the law or infractions of the law are concerned, his record had been clear and blameless.

That term "accessory" is a term which was familiar only to these two convicts. They were accessories together in a number of joint crimes of armed robbery, and they were no doubt tried as accessories with other persons in their previous crimes. Both of these witnesses told you that Hans Haupt was scared of one or more of the prisoners that had been threatening him at that particular time. He was being called a Nazi, a saboteur, a Nazi spy, by lockup guards and Majerczak said he saw a guard handle him roughly. Hans was so frightened he was afraid to take a shower, Majerczak said that. The guard told Hans he would throw him under the shower, clothes and all. Somebody, if not the witness Hamby himself, then somebody else told Hans Haupt that
1474 he should not have a trial at all; that he should be shot by

a firing squad. The night superintendent of the jail told the boys, according to the Government's witnesses, these men, the night superintendent said to these men, "We have got the famous Nazi saboteur here."

The witness Carl Hamby admits that he had a brag with his jailer. He could get newspapers and perhaps other favors, because he had established diplomatic relations with the authorities to his own advantage. He was moved into a cell near Hans Haupt.

I ask you, ladies and gentlemen, would any sane man who found himself threatened and accused of being a Nazi, a saboteur, a spy—would he confirm their accusation whether he was, whether it was true or whether it was false; would he confirm the accusation when he was threatened? Would he tell everybody in a loud voice, loud enough to be heard thirty-five or forty feet away by Majerczak, Majerczak was either thirty-five or forty-seven feet away—I couldn't tell whether the figure was after twelve feet—thirty-five feet, or thirty-five feet plus twelve feet or forty-seven feet, from the answer he gave. Would any sane man tell everybody there—where he was hated and threatened—would he tell it in loud
1475 voice, so that Majerczak could hear, and would he identify himself with saboteurs and flaunt them with all these self-accusing details you heard from the lips of these witnesses, would he expose himself to greater hatred and violence by giving these men more reason to do so, more reason to hate him?

I forgot to mention the most frightful of all things—told Hans Haupt while he was surrounded by hostile prisoners and hostile guards, "Your wife is here in the County Jail and she is being used for immoral purposes." That is what Carl Hamby testified to was told to Hans Haupt by one of the prisoners, whether he told it himself, or by another prisoner, I don't know. He told you, he is the Government witness, that that statement was told to Hans Haupt, that his wife is in the County Jail being used for immoral purposes. I can't imagine anything more terrible to tell this distracted man than that his wife was being used for immoral purposes in the County Jail. That was even worse than the news of his son having been executed in Washington. Far worse.

Ladies and gentlemen, it is a fact, as you have heard in this trial, that Hans Haupt during that terrible night in jail did
1476 attempt to commit suicide by hanging himself. Says Majerczak, sure I saw him do queer things, but I know he was supposed to be putting on the bug act; so, likewise, says the witness Hamby. You may have noticed that these witnesses corroborated each other with remarkable perfection; that is a feat which can only be the result of the careful rehearsing, especially since it happened two years ago. You take any two honest people and put them in a room together and have certain conversation

take place or certain physical things done, and even one hour later, ladies and gentlemen, you ask each of those persons separately what was said or what was done, and you will see how they differ, honestly, from each other. The only time it is possible to tell a story that clicks together is by rehearsing. These men testify as a team. They have been cellmates and partners in crime they committed. They committed one crime together jointly, as they said, and they have been partners in jail. They testified as a team before at the insanity trial. Hamby is obviously the brains of the team, and Majerczak is just a s'ooge.

You will remember after Majerczak told his story almost near perfect on direct examination and on cross-examination he
1477 was lost. He could not remember dates. He could not remember the month. He could not remember the year, even, that was beyond his recall. His voice trailed off with vague repetitions of the questions asked on cross-examination as he tried to remember the story he had told on direct examination.

You will notice also that this joint letter, this joint letter of Hamby and Majerczak, which is in evidence, speaks about the bug act. The bug act is an obsession with these people. They were talking about it, about somebody down at Menard, about another prisoner. They say that they ignored the significance of the queer and crazy conduct of Hans Haupt, because they thought he was putting on the bug act.

Outside of the testimony of these two convicts, all other testimony in the case is insignificant. No other witness in the case, not even the FBI agents, have told you that Hans Haupt has said that he was going to help Herbert Haupt commit an act of sabotage. Not one.

On this matter of intention to commit treason, the prosecution must rely solely on the testimony of two habitual criminals, thrice convicted of felonies. Let us examine it a little further,
1478 please, the testimony of Carl Hamby. In July 1942, when he says this occurred, when he heard the story of Hans Haupt, the story which he told you, which Hamby told you here, he says he felt sorry for Hans Haupt and he undertook to give him legal advice, and undertook to befriend him. He didn't use the word "befriend." He said, try to help him. He was asked, why did he do it. He testified, that he did it because he had nothing against this man. He said: "Why shouldn't I help him." I think he also said, "We were both in the same boat."

Remember, please, ladies and gentlemen, that in July 1942, when this conversation is supposed to have taken place, the United States was in the war, no less than it is now, and it had been in the war since December 7, 1941. Almost two years later, Carl Hamby testified at the insanity hearing of Hans Haupt in this very court-

room. Ladies and gentlemen, he did not then at the insanity trial tell anything about the story you heard from this witness stand. His reason—what was his reason? He gave his reason, "He was not asked about that." I say he lied to you when he made that statement. He was asked about conversations with Hans Haupt during that very same few days in July 1942, when they had adjoining cells——

1479 Mr. Woll. I am going to object to this, if your Honor please. There is nothing of that kind in the record.

Mr. Bertram. He so testified.

Mr. Woll. This witness has not been impeached.

The Court. Who testified to that?

Mr. Bertram. Carl Hamby.

The Court. No, he wasn't asked about that.

Mr. Bertram. He was asked about a conversation during the same period, as I recall it.

The Court. He wasn't asked about the matters you say he testified to.

Mr. Bertram. I am saying he was asked about conversation during the same days, that is what I am saying. I believe the Jury will recall his testimony. I do not intend to mislead the Jury. My recollection is that Carl Hamby told from this witness stand on cross-examination that he was asked about conversations during this same period.

The Court. Carl Hamby wasn't asked about matters of which we have been hearing here within the last two weeks. He wouldn't have been permitted to answer, had he been.

Mr. Bertram. May I proceed, your Honor?

The Court. Yes.

1480 Mr. Bertram. Such conversations would have been just as important in the insanity trial as they would on this trial, in my opinion.

The Court. That is a misstatement of the fact. Don't make another one like it.

Mr. Bertram. I am sorry, your Honor, if I have trespassed.

Let me say here that the witness Majerczak also admitted that he did not tell this story at the insanity trial, and his reason for that is, "They did not ask me about that." Was it patriotism, ladies and gentlemen, that made these witnesses keep silent for these two years? Proof of conviction of a witness of a felony is evidence tending to impeach his credibility and in determining the weight——

Mr. Woll. If your Honor please, I am going to object to that, because the last time he went along that line and he said those are the words of some jurist. After he finishes, I am going to quote some law, too.

Mr. BERTRAM. I believe the court will instruct you——

The COURT. Go ahead.

Mr. BERTRAM. That proof of the conviction of a witness of a felony is evidence tending to impeach his credibility, and
1481 that in determining the weight which the Jury should attach to such witness's testimony, the Jury have a right to take into consideration the fact that the witness has been convicted of a felony. I believe the court will give you that instruction. These men were not convicted once of a felony, but three times. This is the evidence that the Government offers to prove the intent of Hans Haupt, to help Herbert commit sabotage, and the only evidence of such an alleged statement of Hans Haupt. If any evidence is to be considered an insult to your intelligence, and remember Mr. Finn made the remark, it should be the fact that the prosecution offers upon a treason trial the testimony of habitual criminals to supply a most essential part of their evidence, and that you are supposed to accept such testimony as evidence beyond a reasonable doubt. Is there any other evidence in this case to the effect that Hans Haupt ever intended to assist Herbert Haupt in committing sabotage? I am confident you will find absolutely none. In all fairness and justice, you could not consider any unrelated statements made by Hans Haupt in 1935 and 1936 to 1940 as any reasonable evidence that Hans Haupt intended to assist his son five or six years later in commit-
1482 ting sabotage. Or that he offered to assist his son to commit sabotage. He never intended any such thing, and never said so.

I feel deep in my heart that this evidence was introduced by the prosecution for the purpose of creating prejudice in your minds against the defendant. I do not approve of any of these statements—if you believe they were made by Hans Haupt in the various years, the several years prior to the war, and you must consider that these statements were made in peacetime, and it was not unlawful for any person to make such a statement.

I do understand, however, how some of these statements could be made by a foreign-born person, who was a soldier in the last war, a German World War Veteran, but in the United States we do not punish men for any statement they make in time of peace. We pride ourselves upon our freedom of speech. We have two precious jewels here in the United States.

Freedom and Justice are the things for which every American is proud and it is both freedom and justice that we assure to every American whether he is foreign-born or not. Someone may make the argument, and I think Mr. Finn did, that Hans Haupt
1483 should be found guilty in this case, because he raised Herbert Haupt and that he failed in his duty as a parent,

because Hans Haupt is responsible for the sins of his son, but ladies and gentleman, that it is not a proper argument. That is an appeal to prejudice. It is not a fair argument, because Hans Haupt is not on trial for the sins and omissions of a whole lifetime. It is not a fair argument, because he is not on trial for anything he did or failed to do before Herbert left his home in June 1941. And, furthermore, Hans Haupt is not on trial for anything he said himself prior to June 17, 1942, the date of the overt act in the indictment.

Who is there among us who would look well if we had all of the faults and mistakes of our lifetime marshalled up at one time, with no good word, with no word of good deeds, or of our good qualities?

I want to limit that to myself. Are there many other people—I don't want to include you—I think you understand what I mean. It is so easy to make a person look bad by criticism, by reviewing his or her faults.

The defendant in this case, ladies and gentlemen, Hans Haupt surely has been punished for any fault or dereliction of
1484 duty in raising his son by the execution of his only son, and by his own confinement in jail for two years and by the mental anguish that he has suffered as a result, and also by the confinement of his wife in jail.

Now, most any father and mother will comfort a son and will give him food and shelter, but that does not mean that those parents have intentions to commit treason against the United States by so aiding their son.

1485 Christ in his Sermon on the Mount asked of his followers this question: "Oh, what man is there of you, who, if his son asked for bread, will he give him a stone?"

The human heart cannot deny its own flesh and blood. There is enough pain and suffering in the world without convicting a man of crime, which he never intended. He is innocent of treason because he never intended to commit treason. The Constitution of the United States defines treason and says "Treason against the United States shall consist only in levying war against them or in adhering to their enemies, giving them aid and comfort." The enemies of the United States—in this case are the German Reich. The Constitution further provides: "No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act or on confession in open court."

After counsel for the defense have made their arguments to the jury, we may not address you again. If the prosecu-
1486 tion makes any further points which we have not answered, bear in mind that we are not allowed to make a further reply to them. Please do not allow prejudice against

this defendant which will prevent you from doing him justice. Please do not allow the fact that we are now engaged in a great war prevent you from giving this man the benefit of a reasonable doubt. We do not appeal either to your emotions or to your prejudices. If ever a case required the exercise of a person's mind and common sense this is the case that requires it. These facts are simple. You know them as well as any lawyer. They are fundamental facts. Please judge not the defendant in unkind thought nor with hatred or unfairness. I know you assured me when you were qualified as jurors in this case and I believed your answers then and I believe them now. Your own good conscience must control your decision in this case. We all must answer to our conscience in the years to come and the decision you make now cannot be recalled after it is rendered.

I pray to God you will decide this case according to the principles of American justice of which you have heard so much
1487 about in your examination as jurors and of which the Court shall again instruct you, and I say that with all reverence to the Deity.

May I say to you again that I believe with all my heart and soul and with all my mind and intelligence that Hans Haupt never did any wrong against the United States and never intended to do any wrong against our country.

I ask you ladies and gentlemen to bring in a verdict of not guilty.

May I in closing express my appreciation and gratitude to all of you ladies and gentlemen for your kind attention and forbearance in listening to me and may I also express my appreciation of the kindness and forbearance of His Honor, likewise, and I thank also counsel for the prosecution. Thank you, ladies and gentlemen.

The COURT. Take a short recess, ladies and gentlemen.

(Thereupon a recess was had and on the coming in of court after recess the trial of this cause was resumed as follows, that is to say:)

1488 The COURT. Proceed, gentlemen.

Mr. WARNHOLTZ. May it please the Court.

The COURT. Mr. Warnholtz.

Closing argument by Mr. Warnholtz

Mr. WARNHOLTZ. Gentlemen representing the prosecution, ladies and gentlemen of the jury:

At this time I wish to thank his Honor, Judge Barnes for the extreme patience and courtesy he has extended to all of us during this time. I also wish particularly to thank my good friend, Mr. Bertram, who has in such unselfish manner given to me of his time,

energy, intelligence, and ability to assist me in carrying the burden of the defense, which otherwise it would have been upon me to carry alone.

At the beginning I shall briefly reply to Mr. Finn, inasmuch as Mr. Finn referred to some of these statements which I made in my opening statement. I believe I told you at that time that I should be conservative and that I would be conservative in my statements. Now, it is true I stated that government would not be able to produce any evidence as to the sheltering of Herbert Haupt except that at one time two witnesses were present who saw Herbert Haupt in the home of his father and mother. I

1489 still maintain that contention is correct.

They were Gerda Melind Saure and Gustav Zerner. They are the only two witnesses who have ever seen Herbert Haupt in the home of his parents after he returned to Chicago. It is true there was a large number of FBI agents who noticed Herbert went into the house and who noticed that he came out; and by inference it may be concluded that Herbert, during the time, or between the time when he went in and came out, was in the apartment of his parents. I say by inference.

But the Constitution does not state about any inferential evidence, or any circumstantial evidence. It says there must be two witnesses to the act. But supposing one hundred people had seen Herbert Haupt at the home of his parents? What of it? I do not know why Mr. Finn made a particular point of that.

Then another thing I wish to reply to Mr. Finn is that Mr. Finn at quite great length claimed that I brought Erna Haupt to the witness stand for one purpose, to create sympathy in your minds, and that it was a "spectacle."

1490 Well, supposing I did want to create sympathy in your minds? What of it? I will ask the government what did they try to create in your minds when they brought Peter Burger and all these instruments of death and destruction to this courtroom?

They say, yes—they say while Mrs. Haupt was on the stand "if you wish to prove the death of Herbert Haupt we shall consent, or we shall agree that he is dead. We will admit it."

Well, did I not admit in my opening statement, that Herbert Haupt was sent to the United States as a saboteur? Well, most of the time was spent for one purpose, to create hatred in your minds by the proof of that one issue. Now, that evidence was not any more necessary than the evidence that they claim I brought for the one purpose, of creating sympathy. They wanted to create prejudice, hatred. I admit that I wanted you to see Mrs. Haupt, Mrs. Erna Haupt. I wanted you to see her.

They claimed that Hans sheltered Herbert. He was sheltered.

not only by his father he was sheltered by his parents and that included his mother.

It is easy to sit back in an office, smartly talk about "convicting" people. It is so nice to keep out of sight the result, or the
1491 ultimate result, namely, these people, among them Erna Haupt who has been in the county jail, according to her testimony, for two years.

The government forgot that they had not one witness—ten, twenty, thirty, perhaps or more—I did not keep track of it—to prove the point which I had admitted in my opening statement. That was all right, but when I bring Erna Haupt that was all wrong. Then it was done for one purpose, to create sympathy and it was called an insult to your intelligence.

Well, if that was an insult to your intelligence, was it a compliment to your intelligence when they brought the dynamite. What was that? I wonder why they are getting so excited about it, that Mrs. Haupt took the stand. Why? Do you think it was easy for me to ask Mrs. Haupt those questions I did ask her? No, it was not easy.

Now, I want to tell you there is something that compelled me to do this. I have a duty to perform, a duty for the defendant, to bring out whatever there is in his favor. That is what I am here for. That is what Mr. Bertram is trying to do.
1492 We must not be derelict in that duty. We are the only friends that that man has today; we are the only ones who stand between his liberty and his—possible death in the electric chair; and that duty we are going to perform in spite of everything.

Our duty is one-sided. It is just the duty to defend our client. Of course, there is one more thing we have to do. We have to conduct ourselves in accordance with the ethics as are laid down for the legal profession. That we hope we have done in the past and shall continue to do now.

Counsel representing the prosecution or the "government" as it is termed, also has a duty to perform. I will tell you what that is:

To procure and present evidence in a fair manner so that justice may be done. The Government has the right to strike hard blows, but it has not got the right to strike foul blows. It must not hit below the belt.

The United States' attorney or the "District Attorney" as he is often called, is the representative not of either party to a controversy, but, of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern fairly,
1493 and whose interest therefore in a criminal prosecution is not that it shall win a case, but that justice shall be done.

Those are not my words. Those are the words of the Supreme Court of the United States of America, when it recently reversed a case where the District Attorney had forgotten that.

Mr. WOLL. If your Honor please, just so the inference does not follow, it was not this District Attorney. I want the record made clear.

The COURT. That is correct.

Mr. WARNHOLTZ. Ladies and gentlemen, permit me to read to you a few paragraphs from the opening statement made to you by the District Attorney. Incidentally, I will reply to Mr. Woll at this time, as to what he stated just now.

Just as Mr. Woll desires to have his record clear, I would like to have one point clear, too. I am defending Hans Max Haupt. I am not on trial. If there is anything about me that you do not like, my face, my voice, my nose, my behavior, whatever it may be, do not charge it to the defendant. He cannot help it.

1494 I shall read a few paragraphs from the opening statement of the gentleman who spoke first, Mr. Finn, my colleague, referring to the alleged instructions given to Herbert Haupt in Germany, according to Burger. The District Attorney said this: "We will show that Herbert told his father that he needed his car to carry out the job that he had to do in America; that he needed an automobile to get around faster, so that he could do as much damage to the defense industries of America as possible," that is what the United States District Attorney told you in his opening statement. And here is something else he told you.

"We will show that Herbert attempted then to seek employment at the Simpson Optical Manufacturing Company. We will show that this defendant, although Herbert had told him, according to his own statement, that he intended to steal the plans from the optical companies, that he took Herbert over to the home of the Superintendent of the Simpson Optical Company, where

1495 Herbert attempted to secure a job with the company."

That is what the United States District Attorney told you. It is not the allegation that Hans bought an automobile to which I object. It is not the allegation that Hans took his son over to the Superintendent and to the foreman of the Simpson Optical Company, to which I object, but I do object to the poison that was put in to this statement, alongside of what was a statement which was objectionable in its nature, and that poison was the following:

He said: "Herbert told his father that he needed his car to carry out the job that he had to do in America; that he needed a car to get around faster, so that he could do as much damage to the defense industries of America as possible."

I want to further object to several other little statements, that additional poison that was put into it at the time by the District Attorney when he said: "That Herbert told his father" that
1496 is what he says—"that he intended to steal plans from the optical companies."

These statements, ladies and gentlemen, are perhaps the most damning statements of the entire case. There is nothing in the case that surpasses these statements. These statements are of such a serious nature that a mob out on the street would lynch a man and a jury might condemn a man if such allegations are made.

Of course, there is one thing, a jury demands proof, the mob on the street does not—frequently not.

Now, I will ask you: What proof did the District Attorney bring as to these most terrible charges, not regarding the camouflage, not regarding the window dressing as to these two terrible charges, a most terrible thing that was said in the opening made by the gentleman representing the government. What proof?

Mr. WOLL. Mr. Warnholtz, as a matter of fact I said that, not Mr. Finn.

Mr. WARNHOLTZ. When he made these statements here,
1497 on the real truth whereof the very life of a man may depend, it would be expected they would be supported by responsible evidence. It is reasonable to expect that.

What evidence was offered in fact? Not the testimony of two witnesses to an overt act, which is the proper way of proving treason under the provisions of the United States Constitution, not even by the testimony of one witness to an overt act. No; by the testimony of one single witness who was not present at the time, and he told you that somebody told him that Hans Haupt told him; a witness who could not qualify under the constitutional provisions.

Let us see, let us see one more thing. Was this witness at least a person of credibility, a person whom you or I can fully believe? No. I will tell you who it was. It was that master-mind from the Joliet Penitentiary, Hamby, a type of man whom you and I do pray that we will never meet if we have some evening to walk alone on some deserted street. I have pity for that man, as I have for every person whose mind has become twisted in some manner.

1498 But, that does not detract from the fact that this man is a dangerous person, and perhaps more so because he is intelligent. He is now serving a life sentence for robbery with a gun, and he is one of those men, that type of man, a gunman. That is all that the United States District Attorney offered in support of these two most terrible charges made in the entire case. It is the sole proof the government brought.

While I am on the subject of witnesses, who have testified in this case, let me call your attention to five different sets of witnesses. First, we have Mr. Hamby and Mr. Majerczak, the gentlemen who have come into conflict with the law and who are now confined in the penitentiary. It is understandable they do not like it there and hope to shorten their term by being of service to authorities in whatever way they can conceive of. They will tell a lie under oath or otherwise, as readily as they will point a gun at you to take your property. Rest assured of that.

Then we have two agents of the Federal Bureau of Investigation. In the performance of their duty they talked to Hans
1499 Haupt at the office of the United States Marshal on August 5, 1942, about one hour and a half before the arraignment of Hans Max Haupt took place, the continuance of that arraignment which had been had first, I believe, on July 21. It seems they talked to Hans Max Haupt while he was in a mentally upset condition, and that they did not pay much attention to the entire conversation, and did not attribute great importance to it at the time, at that time.

These two gentlemen—they are upright, fine men. You cannot become a member of the Federal Bureau of Investigation without being upright. They are thoroughly investigated before they are accepted, so there is nothing—please do not construe anything that I say is for the purpose of discrediting them as witnesses—but here is what Mr. Hirsch testified to regarding the mental condition of Hans Haupt at the time when these statements were made and were supposed to have been made.

I asked him: "When you talked to Hans Haupt did you at that time believe you were talking to a sane or an insane person?"

His answer: "Do you want my opinion?" "Yes".

1500 "I would say that Hans was upset."

That is as far as he went and I did not pursue the question any further. At any rate, these two agents, Mr. Robe and Mr. Hirsch, never testified at the first trial regarding this conversation which took place on August 5, 1942, at the office of the United States Marshal.

I will also state this, in support of my contention that they did not attribute much importance to the entire matter. In support of that I submit this: Mr. Hirsch referred to five meetings which Hans Haupt and several other persons had, according to what Hans Haupt told him. Mr. Robe who was present at the same time referred to only three meetings. That is all that he heard about. They evidently were not much impressed.

They saw a man who had been in jail for a number of weeks, who was terribly upset, and who did not know what had become of his wife, or his son.

I ask you to put yourself into the position of Hans Max Haupt and try to fathom, if you can, what your mental condition would be under such circumstances, what your mental condition would be.

1501 I ask you, gentlemen, in the County jail—those inmates around there, around you, told you that your wife is also in jail and that she is being used for immoral purposes there—if a man had not been insane as yet, that gradually possibly would drive him insane.

Now, these two groups of witnesses, Mr. Hamby and Mr. Majerczak, and later on Mr. Robe and Mr. Hirsch, they both belong to a group of witnesses who did not testify to overt acts. They do not qualify, according to the Constitution, to prove an overt act, because they were not present when the overt act was committed. They had no direct knowledge thereof.

Then we have a third group of witnesses. There was Mr. Zermer and Mr. Eggert, both truthful. They did not intend to lie, but they were very confused. I wonder if you remember Mr. Zermer, the gentlemen, I believe, said he was a tinsmith, and Mr. Eggert, a plasterer.

Let us take Mr. Zermer. He was confused when he was a witness in this trial here and it seems that he must have been con-
1502 fused at all times when he was questioned until ultimately, he became so enmeshed in the many statements which he had made he did not know any more his way in or out. He simply did not know any more what to say. He made statements without properly understanding questions, and those statements were taken down by agents of the Federal Bureau of Investigation, by members of the office of the United States District Attorney.

Mr. Zermer is not a man who wants to tell a lie. He seems to be entirely of a harmless nature. He is a good man, but his testimony, involving only two or three points, was the result of Zermer being quizzed for three days: three long days by agents of the Federal Bureau of Investigation.

During these three days they held him a prisoner without lawful authority. They did not allow him to go home. They also threatened him with revocation of his citizenship papers. I just wonder what it was that he said when they claimed they would take his papers away, or his papers should be taken away later on. I wonder what he said then. Did he say something different from what he testified here? We were not able to find out.

1503 So, by the time he came here to testify, the same as at the last trial, he was completely confused, so that he did not know any more whether he was going or coming, but there is one thing he does remember, he knows, and that is underlying threat every time when he is asked, Mr. Zermer, did you not testify before

the Grand Jury, and were you not then under oath?" That he remembers, and meekly he will answer "Yes."

"Was that the truth then?" "Oh, yes; yes."

Because if he would state otherwise you know what would happen to him and he knows somewhere subconsciously, he does realize he is in some kind of a tight spot. That was Mr. Zermer.

Let me also call your attention to something in order to substantiate my charges that Mr. Zermer was confused and did not understand. You remember Mr. Zermer testified that he arrived at the Haupt home on Tuesday evening, June 23, 1942; that at the time when he arrived there he found there Hans Haupt, Herbert Haupt, and Erna Haupt.

I did ask him, if I remember correctly, whether Herbert Haupt left during the time that he was there.

1504 "No, not until later on, until 10:30, when he—Herbert—left with the young lady."

What did Gerda Melind Haure state? She stated this:

"When I arrived at the Haupt home Herbert was not there. I had an appointment with him there and I asked his mother where he was and she said" I believe this is what she said "'he went out to meet you.'"

And so immediately, Hans Haupt, the father, went out, after Herbert, to tell him that Gerda had already arrived, that they must have missed each other at whatever place Herbert thought that he could meet her. I will tell you what place it was. It was at the corner of Webster and Clark Streets.

That this is correct can easily be verified. The testimony of at least two agents of the FBI will prove it. They saw Herbert that evening and at that time at the corner of Webster and Lincoln Avenue where he was for about twenty minutes. He knew that Gerda Melind coming up north could there take a streetcar, the Lincoln Avenue streetcar or the Clark Street car, and he knew that in either event, whichever car she took, she had to pass

1505 or get off at the corner of Webster and Lincoln Avenue.

Then that Hans Haupt did go over there, and on his way Herbert saw him. In the meantime Herbert had grown tired waiting and jumped on a street car and rode a few blocks. Evidently seeing his father coming in the opposite direction he got off and they both went into a tavern and came out again in about three or four minutes. Then he went into the house. You will remember this was the testimony of the FBI agents, but still Zermer testified when he got there Herbert was in the house. Zermer did not want to lie about it. He just has forgotten. He is confused. He is confused on that point, as he is confused on every other point except one, when the threat is made, "Did you not" or "Did you testify before the grand jury on that subject, then under oath?"

Then his confusion slightly disappears, as a matter of self protection.

Then we go to the witness Eggert. He was also threatened, with loss of citizenship papers by members of the Federal Bureau of Investigation. There was some testimony about an effort
1506 to throw him into a concentration camp. Ladies and gentlemen, you observed Mr. Eggert. He was this stoutish, middle-aged man. He said he was a plasterer by trade. He was not the type of man, as far as I can judge, who would go out to lie to people. He is a simple man. So I am wondering, if that assumption is correct, that he does not want to lie, I am wondering just what did he say when he was being threatened with the concentration camp, when he was being threatened that his citizenship papers would be taken away from him. I wonder what he did say. Did he say something inconsistent with the testimony which was offered here? There was only one thing that he knew, but he said they had statements, and likely as not he appeared before the grand jury. That is the third group of witnesses. We have another group, four. We have Mr. Schroeder, Mr. Poppe, and Mrs. Fishman. There might have been another one that I have forgotten. They testified to things which took place, I would say—well, I believe it was anywhere as far back as 1935. They testified about Haupt, statements made by Hans Haupt since that time, to about the year 1941, the early part.

1507 If Hans Haupt made the statements I will say it was wrong; he should not have made them, but he did not then commit a crime when he did make them. It was his right. He may not have shown good judgment, and we do not know the circumstances under which they were made, but he should not have made them. This country has been good to him; it had been good to him up to then, as far as I know. True enough he went through the depression, the same as all of us, but he found a home in America. His boy went to school here; and he should have trained his mind, as far as possible, to see the United States in a light favorable to our country rather than the other way. Perhaps the affection for the country from which he came, where he had spent his childhood, was still too great. It takes years and years until that wears off, not only with Hans Haupt, with all people. It is natural, unless they come from a country where they were persecuted. Then they may in bitterness against that country forget themselves faster.

You know—not just Hans Haupt—I would say almost every person, everyone, barring none, some time in his lifetime has made some statements or has done something of which he is not particularly proud.

1508 I would like to see the person who can—I say barring

gone—who would dare walk out on the street, having in front of him a signboard, and painted on it the things he has done in his lifetime, or said in his lifetime whereof he is not proud. I would like to see that person who would dare to.

So, you see, you have Hans Haupt paraded before you, just in that manner, and not anything to show what good he may have done. But, if Hans Haupt did make those statements, I am sure that it was not anything which indicated that he intended to commit treason. In fact, you cannot commit treason in times of peace. Treason can only be committed, and that is also according to the Constitution of the United States of America, in times of war.

I will ask you, if he made statements in the year 1935, how are you going to conclude that at that time he made that statement with the intention of later on committing treason? How did he know then that we would ever have a war? How did he know then that he was going to buy an automobile in 1942?

Still they say the statements made in 1935 show a
1509 treasonable intention with which he bought an automobile in 1942. You figure it out. I cannot.

Now, ladies and gentlemen, I come to the fifth class of witnesses, the FBI agents who trailed Herbert Haupt, whereby the government claims that it has partly established the overt act of harboring; then the persons who testified to the purchase of the automobile whereby the government claims that it partly establishes the overt acts relating to the purchase of the automobile; and then the testimony of Mr. Granau and his family and Mr. Koch and his family—or his wife—whereby the government claims partly to have established that Hans Haupt accompanied Herbert so that Herbert could secure employment with the Simpson Optical Company where he had worked before.

These witnesses, all of them, testified in a manner to which we can attach no criticism whatsoever. They told us what they saw and what they heard. They evidently were not subjected to any intimidation at any time. And we accept their testimony.

1510 Now, you notice that I stated that the government claims by this testimony that it partially established the overt acts, these three overt acts and that is all there is, three.

True enough, there are twelve in number, but these twelve overt acts which were submitted to you as overt acts on treason relate only to three matters, the purchase of the automobile, the sheltering of Herbert Haupt and the going of Hans Haupt along with his boy when Herbert applied for a job. That is all you have of those twelve overt acts, nothing else.

I say that the government contends that it has partly proven them—partly, why? Because an overt act consists of two things.

the act of itself and of the intention with which it was committed. And these witnesses testified only to the acts, not to the intention.

As far as the automobile is concerned, there is no dispute about the facts of purchase. I am quite sure I admitted it in my opening statement. Hans Haupt went to this Warner Sales Company, accompanied by Herbert and bought an automobile.

We also know that later on Herbert had that automobile
1511 and drove around in it. There is no evidence to show that he drove around to any place to blow up bridges, but he drove around in it.

But we also brought witnesses who showed that Herbert had an automobile *before he left in 1941; that he left* this automobile behind; and we have documentary evidence which will be given to you when you retire to the jury room, showing the title of that car when it was acquired, namely, about November 1940, about the time when Herbert became 21 years old, at which time this automobile was given to him by his parents, who were, perhaps, foolish, but we all are with reference to our children at times.

This record will also show that later on that title was corrected and the title was brought into Hans Haupt. That was after Herbert had left. These records will further show, as was brought out by testimony, that Hans Haupt had his own automobile. He had an automobile before he gave Herbert one for his birthday. It was an old car of 1936, an Oldsmobile. Hans did not need a very good car for driving around, putting his painter's and decorator's tools and equipment in the car, and the old car was good enough for the purpose; but after Herbert had left and did
1512 not return, according to these records under the seal of the State of Illinois, Hans sold that old Oldsmobile, and he started to use the car which Herbert had left behind.

So what is so strange about that, that upon the return of Herbert, Hans should replace the car which he had in that manner taken from Herbert, replace it by a new car. Young men like to have automobiles.

If you have sons, or if you have children you know. What is so strange about it? For Hans to go somewhat out of his way for that purpose? We all do that. Any man, any father who has a boy, and there is but one car in the family, knows on Saturday evenings and on Sundays the father will stay at home and allow the boy to take the car. Maybe we are foolish, but we just do it, every one of us.

You are supposed to believe [illegible] and without this you cannot find the defendant guilty, you are supposed to believe that Hans Haupt bought the automobile with traitorous intent, with an intention to do harm to the United States as Mr. Finn said in his opening

statement, not for the purpose which I believe we have
1513 *have* actually shown it was bought for.

Let us go now to the next proposition. That is the matter of Herbert Haupt in the company of his father—and for that matter in the company of his mother—going to the place of Mr. Grunau, the superintendent and Mr. Koch the foreman of the Simpson Optical Company. I will ask you, what was wrong about that? I will show you later on, as I have shown you, shown to you during the trial, that Hans Haupt was a man who worked and who worked hard. He did not believe in his son being at home, loafing around. He wanted the boy to work like any son should do. What was the most logical place where he should go but to the Simpson Optical Company?

Herbert had worked there two years. He knew something about that business, so what was wrong about it? But, according to the government, of course, there was only one reason, there could be only one reason, there never could be anything else in this case, but treason. According to the government, no matter what Hans ever did, according to the government, Hans went
there with Herbert so that Herbert at any time could steal
1514 the plans of the Norden bomb sight, that is the only thing it possibly could have been.

Then we talk about the harboring matter.

Well, there were two witnesses who saw Herbert in the home of his parents, Gerda Melind and Zermer and many agents saw Herbert go in and go out. Now, if Herbert was harbored in the home of his parents, I would ask you what is wrong about that? Is it so strange for parents to extend to their son that which it is the custom to give him, a home? Give him the comforts of home life, to allow him to sleep there and perhaps to give him a cup of coffee?

Is it possible that that can only be done with one intention, in order to blow up the United States; or might there have been, might the intention have been for Hans, and also the boy's mother, to do that which every father and mother does to help him? To help the boy, to re-establish him as well as they knew how?

Well, according to the prosecution you are supposed to believe that these three acts, the buying of the automobile, the harboring, if it was proven, and this accompanying to the Simpson
1515 Optical Company were done for one purpose; it was done for the purpose of treason. Hans did that with traitorous intent and with nothing else; it just could not be any other way.

You are supposed not only to believe that that is possible, no; they want you to say that you believe too beyond a reasonable doubt; they want you to exclude the possibility that Hans Haupt

may have acted as a father. I say the "possibility" what I should say is they want you to believe the most perverse or remote conclusion that a man can draw, namely that Hans Haupt did all of this in order to lead his own son to destruction. And with Herbert to lead his own wife to destruction, because that would be the natural—naturally an incident that would have to follow.

A mother whose boy is taken away under conditions as subsequently happened is destroyed, and everything in her soul. Maybe her body still lives. A mother is the only person who never deserts her own child. There is no one else. These impulses of nature are the laws of God. We are supposed to exist with reference to these. You can take all your laws that were ever passed, anywhere in the world, and they would all go to
1516 smash, to pieces, before these laws of God will terminate, because with that would terminate mankind.

Now I wish to give you some of the evidence which the defense brought, and which was so belittled by the prosecution. I will admit it is just matter of fact evidence. It is very simple. It is very sober. It was brought by witnesses who were not quite as colorful as Mr. Burger. It does not involve objects as colorful as introduced by the government. It is merely the working record of Hans Haupt during the time that his boy was in Chicago.

There is one distinction, however, between that evidence and the evidence brought by the government. Every one of those witnesses told the truth. They did not know how to lie nor did they become terribly confused, or if they did become confused, it was because it was the first time for them that day here on that witness stand, because the defense could not and would not send out subpoenaes for the purpose of getting anybody into the defense counsel's office, witnesses and to question them. The defense could not go out and take the witnesses, bring them into a private jail and hold them there, threatened with de-
1517 naturalization or being thrown into a concentration camp.

These witnesses had no occasion to become confused beforehand.

And if I should go beyond the record I might say to you that one of them did at this——

Mr. HURLEY. I will object, your Honor.

The COURT. I cannot hear you.

Mr. HURLEY. Talking about going beyond the record.

Mr. WARNHOLTZ. I have not done so yet.

Mr. WOLL. He warned us that he would.

The COURT. Stay within the record.

Mr. WARNHOLTZ. Withhold your objection.

The COURT. Stay within the record.

Mr. WARNHOLTZ. The record of Max Hans Haupt working

schedule and so forth, during the time that his boy was here have been taken from the testimony of these witnesses and also from the testimony of government witnesses here before.

We were told that Max Hans Haupt first saw his son Friday, June 19, 1942. On the afternoon of that day Herbert Haupt is supposed to have returned to Chicago.

1518 The next day, that is the first day that follows, Saturday, June 20, Hans Haupt worked from eight o'clock in the morning until eleven o'clock at night as a painter, decorator, and so forth, at a building at 2545 North Clark Street. He worked there, according to the witness Peter Wolf who worked with him, from eight to eleven o'clock at night, or fifteen hours. That type of work is not easy work.

When he came home, it was a Saturday weekend, and he had the automobile along.

According to the witness, he then had to go out again, to the south side, to the Wergins. As you remember, Herbert did not leave Chicago alone. With him was Wolfgang Wergin. Then the direct testimony was, as testified here, that in some way or other Herbert evidently prevailed upon his father to take him down there that evening, so that Herbert could talk to Mr. and Mrs. Wergin and tell them about their boy, Wolfgang. Wolfgang had not returned.

So after this man had worked fifteen hours that day he spent another four hours or five hours in making a social visit—whatever it was. That was not treason. No one could testify much about that, of what happened, but he, his wife and Herbert
1519 did that evening drive to the Wergin home. And that is one of those "famous meetings".

You have all heard so much about the meetings. Well, let me call your attention to this one fact, that all of these meetings that you have heard about took place on a Saturday, on a Sunday evening, when people happened to be home. They could not show you any meetings during the week, because these people were busy, but on Saturdays—you and I also meet people. Later on somebody comes along and says, "You had meetings." If they held meetings with the sinister meaning that the government likes to attribute to it, why did they not have meetings during the week, but weekends is the only time that the working man can find to meet his friends. That was Saturday.

Sunday, what did Hans do? He again worked from ten o'clock in the morning until one o'clock in the afternoon, painting and decorating, finishing up at the same apartment where he had

worked all day Saturday. That is according to the testimony of the janitor of that building. That you may remember. That was Mr. Tischler who is now a farmer in Hartford, Michigan. To go on——

The COURT. About how much more time will you
1520 require, Mr. Warnholtz?

Mr. WARNHOLTZ. I would say about fifteen or twenty minutes. It could be interrupted.

The COURT. I think we will recess at this time until 2:00 o'clock. Do not discuss this case, ladies and gentlemen, and do not permit anyone to discuss it with you and return here at two o'clock.

(And thereupon the jury withdrew and the following proceedings were had in the absence of the jury:)

The COURT. Can you say about how much time you will require?

Mr. WOLL. Forty two minutes. I think that is what your Honor said we had left.

The COURT. That is about an hour and two minutes. Unfortunately, the Court's instructions will take some considerable time. What do you gentlemen think of instructing the jury this evening? What does the defense say about it?

Mr. WARNHOLTZ. Well, we do feel that it might possibly
1521 be best, unless we can adjourn until tomorrow morning and continue this?

The COURT. The only thing, I can allow you to finish your argument today and have the case submitted to the jury today, or will you finish the argument today and have me instruct the jury in the morning?

Mr. WARNHOLTZ. The defense would say or be disposed to say that it would be better to have the jury get the case today.

The COURT. Gentlemen, that is your settled judgment, is it?

Mr. WARNHOLTZ. I was just asking. On that point I think it would be better time, to avoid the jury being locked up, if the instructions are given in the morning. I will take my chance.

The COURT. Finish your argument today and I will instruct the jury in the morning. Be back at two o'clock.

(Thereupon an adjournment was taken to Wednesday, June 7th, A. D. 1944, at the hour of 2:00 o'clock P. M.)

1522 In the District Court of the United States for the Northern District of Illinois, Eastern Division, at Chicago

UNITED STATES OF AMERICA

vs.

HANS MAX HAUPT

Before Hon. JOHN P. BARNES, Judge, and a Jury

Wednesday, June 7, 1944, 2:00 o'clock P. M.

Court met pursuant to recess.

Counsel present: Messrs. J. Albert Woll, Earle C. Hurley, Richard G. Finn, Paul A. F. Warnholtz, Frederick J. Bertram.

1523 The COURT. Bring in the jury:

(The following proceedings were had in open court in the presence and hearing of the jury:)

The COURT. Ladies and gentlemen, I did think we would conclude the arguments today and that I would instruct you as to the law and submit the case to you, but just prior to noon I concluded it probably would be better to conclude the arguments today and then I shall instruct you tomorrow morning at ten o'clock. The case will be submitted to you then, some time before eleven o'clock tomorrow. You are ready to proceed, Mr. Warnholtz?

Mr. WARNHOLTZ. May it please your Honor?

The COURT. Mr. Warnholtz.

Mr. WARNHOLTZ. Ladies and gentlemen of the jury: Continuing on the working record of Hans Max Haupt I will now come to Monday, June 22. On that day, according to Mr. Nolan, the contractor, Hans Haupt worked as a bricklayer somewhere on the south side on 43rd Street. There is no evidence to show when he left his home in the morning. So all we can do is to use our good common sense.

1524 I believe that tells us that men engaged in that type of work usually leave bright and early in the morning. They do not start in the afternoon. Mr. Nolan, I believe told you that on that day Mr. Tobsing, the man who died later on through an accident in the building trade, was working with Hans Haupt at this particular job.

In the evening, you may remember, Hans Haupt, his wife and Herbert dropped in for a few minutes, downstairs where they lived, at the home of the Kluczyk and said "how do you do," and remarked that they had something more to do and could not stay very long; the record shows that later on that evening they all

went out to see Mr. and Mrs. Grunau, Mr. and Mrs. Koch, regarding this employment of Herbert. That is Monday, June 22nd.

On the succeeding day, June 23, we again find Hans Haupt working as a bricklayer on 43rd Street in Chicago, where Mr. Nolan saw him at work. During the evening you may remember from the testimony Hans went, together with his son Herbert, to the Warner Motor Sales Company and there made a down payment on an automobile and still later he was at home, if I
1525 recollect correctly, and I believe it is correct. In the evening when Gerda Melind Saure and Mr. Zermer were at his home. That accounts for Tuesday, June 23.

On Wednesday, June 24, we again find Hans Haupt working as a bricklayer on 43rd Street. It seems that on that day they finished over there. Evidently he got through quite early because according to the testimony he was at four o'clock in the afternoon on Wellington Avenue and there, as Mr. Eggert testified Hans helped Mr. Eggert to "clean up" as they call it. Mr. Eggert was a plasterer. That was over on Wellington Avenue, on the north side.

On Wednesday, Hans Haupt and his son Herbert again were at the Warner Motor Sales Company and completed the transaction of purchasing an automobile.

Thursday, the succeeding day, June 25, Hans Haupt left his home at about 7:15 in the morning. Outside were waiting for him Mr. Eggert and Mr. Tobsing. It was at that time Mr. Eggert testified that he saw Herbert come out of the house. Hans proceeded with Eggert and Tobsing taking them into his car and over to Oakley Boulevard where Hans had undertaken to do some sort of a chimney job for Mr. Nolan.
1526 Upon arriving at the place of work Hans helped in putting up the scaffold. Then he went to work at some other place. According to the testimony of Mr. Nolan, it seems that he went to Adams Street where he was also doing a chimney repair job. He did not finish that on that day because as Mr. Nolan testified Hans Haupt was afraid he might fall off the roof or something like it, being alone.

On Friday we again find Hans Haupt, together with Mr. Eggert and Mr. Tobsin, at the Oakley Boulevard address where they finished up the work at about two o'clock in the afternoon. Mr. Nolan has joined them at that time and the four men, Mr. Nolan in his car, Eggert and Tobsing in Mr. Haupt's car went over to this Adams Street job. There Hans, together with Nolan completed the chimney repair job. After that Mr. Nolan left, and Hans Haupt together with Mr. Eggert and Tobsing proceeded over to Burling Street where Hans Haupt explained to them or

told them what they should do there on Monday of the succeeding week. This was Friday.

1527 On the day following men engaged in the building trades—being Saturday—usually do not work.

Later on in the evening of that day we find Hans Haupt—that was Friday—we find Hans Haupt—or was it perhaps Thursday—in some tavern on Lincoln Avenue, the Smokenberg Tavern, as testified to by the witness Sausen, Jr., who engaged him to do work for him, painting work, the following week.

Still later in the evening of that day Max Haupt attended a meeting at the Atlantic hotel of the German Day Association, where he was an officer of some sort.

The testimony in that case was given by Mr. Graff. You may remember him. He testified that he and Haupt were officers of the German Day Association which, if I remember correctly, distributed the proceeds of the one affair that they had annually, for charitable purposes.

The last day, Saturday, that was the day when at nine o'clock in the morning, or 9:05 when Herbert Haupt, unbeknown to his parents was arrested on Webster Avenue near the elevated station.

1528 On Saturday, according to the witness, Mr. Schoenfeld, Hans went over to Wellington Avenue and there received a check for work he had done for Mr. Schoenfeld. Some time during that day Hans Haupt went to the Lake View Trust and Savings Bank and cashed that check. That bank is located at the corner of Belmont Avenue and Lincoln Avenue in Chicago.

And that closes the record as far as we have proven it by testimony. I believe that this record shows that Hans Haupt intended at all times to do but one thing and that was to make his family, which included his son, as happy as possible, through the products of his labor, and not through ill-gotten money or gains, to make his family happy. That is what he worked for and that is all he worked for.

I feel that it will be entirely in conformity with the instructions which you will get from His Honor, Judge Barnes, in this case when I say that Hans Haupt did not commit treason when he bought that automobile for his son Herbert, if it was Hans Haupt's intention, sole intention, that Herbert should derive from the use of that automobile such convenience and pleasure as young men do derive therefrom; and if it was the sole intention of Max Haupt when he accompanied his son to the superintendent of the
1529 Simpson Optical, to have his son lead a good, orderly, and productive life, then Hans Haupt was not guilty of treason in that respect; and if it was the sole intention of Hans Haupt in giving his son a room to sleep, or a cup of coffee or something else

to eat or drink, if that was done so that his son should enjoy such advantages of home life, and not for any traitorous purposes, then Hans Haupt did not commit treason in that respect.

When we take all this camouflage away again from this case, there remains in this case this: The buying of the automobile, the sheltering of Herbert Haupt and the going of Hans Haupt, together with his son to the superintendent of the Simpson Optical Company.

Ladies and gentlemen, you are supposed to believe beyond a reasonable doubt that Hans Haupt with reference to these three actions was motivated by only one thing, to commit treason against the United States of America.

For that to a large extent, particularly with reference to the terrible charges which were mentioned in the beginning you
1530 have the word of two habitual criminals, men who are now confined in the penitentiary, men who are supposed to be, according to those who judged on them, unfit to society. Those are the men upon whose word you are supposed to judge and say that Hans Max Haupt is a traitor. The prosecution wants you to believe that and nothing else. Otherwise the prosecution cannot win this case.

You are asked to substitute this unnatural conclusion for that which always motivates parents in their actions towards their children, namely, for love and affection. And I say it was solely love and affection for his boy and not a desire to destroy his boy, to aid the German government, which motivated Hans Haupt.

Yes: Hans Haupt was born in Germany. It is also true that he belonged to several so-called "German-American societies," but have we become so blinded that today we say everything connected with Germans or German-Americans represents the devil?

You may remember that Mr. Graff mentioned some of
1531 these German-American societies. He mentioned the German Aid Society which has been active in the City of Chicago for almost one hundred years, for time beyond our memory and recollection. He mentioned another society, the Singing Society, the oldest one in Chicago, he claimed, which has been engaged in its particular activities or functions—he called it a Glee Club—for more than seventy-five years. I believe seventy-eight years, he said. What harm have these societies done? I ask you. I could perhaps tell you of a great deal of good they have done, but that does not fit into the picture just now, so I will pass that up.

There is one question I want to ask you. What has Hans Max Haupt done since America entered the war? What has he done that was traitorous? What has he done that was traitorous? I know of one thing. He has suffered.

That boy of his was of a young and immature mind, of whom I do not want to speak because I do not wish to harm the father still more. I also could say something against that boy and with the same right the government can because I am living here. It is my home.

1532 Well, that boy committed a terrible wrong. For it he paid a terrible penalty when he was but 21 or 22 years old. He is dead and he has left behind him a shattered home and broken hearts. For these two the sun will never shine again, no matter what you do, but in the darkness which must be theirs for the rest of their lifetime, there might be, perhaps, a little consolation, some small comfort may come to them, to this father and mother by having each other.

There has been some objection that I may appeal to your sympathy—sympathy and understanding which is another word for it. Yes, I do appeal to your sympathy. When I do that I appeal to the normal mind. You cannot find a normal mind at all without sympathy. Hatred is something that is not normal. It is for the government to appeal to hatred, prejudice, but there is not any man, any good man who can cut out sympathy and understanding which is always within. That is a natural function of every good, human being and so I do appeal for it anyway, but I also ask for something else. That is justice.

1533 I told you in the beginning, in my opening statement which is now almost three weeks ago, that to be just means to be courageous and I will ask you again to have the courage to be just.

I ask you to set Hans Max Haupt free, for all he did is that he acted as a father to a son and not as a traitor. Hans Max Haupt is not a man with a black heart. I thank you.

Closing argument on behalf of the Government

The COURT. Mr. Woll.

Mr. WOLL. May it please the Court.

The COURT. Mr. Woll.

Mr. WOLL. Mr. Warnholtz, Mr. Bertram, Mr. Hurley, Mr. Finn, Ladies and Gentlemen:

Mr. Warnholtz has been good enough to advise you that he is appealing to your sympathy. Now, you know sympathy can work two ways, and misplaced sympathy for one man can cause a lot of grief for a lot of mothers and fathers in this country who are loyal to this country and who are hoping that "By God they are safe" that their boys and girls are safe in these times.

1534 If you want sympathy let us not make it one-sided. Let us have a little sympathy for the government of the United States, also. Let us not just think of this man in this courtroom.

Let us realize the responsibilities and duties that are placed upon us and let us realize that an idle act on our part, an inadvertent verdict on our part which is swayed by sympathy may in the long run cause each of us to regret it as long as we live.

We know that an invasion took place in this country on June 17, 1942.

Mr. WARNHOLTZ. Just a moment. I object to that. This war is not being won, nor is the invasion being won by what is before us, nobody landed here. It has no place in this argument, I believe.

Mr. WOLL. I am not referring to anything there. I am referring to this invasion of this country on June 17, 1942, by these saboteurs.

Mr. WARNHOLTZ. I will withdraw it, pardon me.

Mr. WOLL. We know that an invasion took place in this country on June of 1942.

Do we know that the ultimate success of that mission would not have determined a future course? Do we know the ultimate success of that mission may determine a future course?

1535 Can we be at liberty and comfortable as we are in this country which, thank God right now, is safe for the time being? Can we sit here comfortably, saying to ourselves that we need not worry about saboteurs and spies landing here, we can take care of ourselves?

That is what the Federal Bureau of Investigation did in this case. The Federal Bureau of Investigation took care of us. Now, because the agencies of government were able to cope with the smartest intellects the German Reich could furnish are we to say that this is an unimportant incident in the American life? Are we to say that this incident should be brushed aside because the mission was a failure? To do so would be to jeopardize the government and to jeopardize the splendid work performed by the Federal Bureau of Investigation. Because they were alert, because they realized the seriousness, the danger to our country and because our counterespionage system was so efficient, they nipped this plot in the bud. Is that any reason why we should say to ourselves that no harm has been done, and Hans Max Haupt should walk out of this courtroom a free man?

1536 I have never heard an argument like that advanced in courts before in my whole life.

This is serious business. As Mr. Finn told you more damage could be done by the proper placing of a bomb in a particular part of a factory than all the paratroopers, and all the shiploads of men than could possibly be assembled. This was a serious threat to our national existence, as serious as any that we have experienced in this war.

Let us not lose sight of our sense of value. One American life

is not worth misplaced sympathy. By that I mean you cannot misplace sympathy to jeopardize one American life.

Now, I am going to tell you something. It has been brought out by defense attorneys. I think Mr. Bertram again commented on the meaning of an accessory and he said that Hamby brought out the word accessory and that Hans Max Haupt did not use that expression. Let me tell you what the evidence was.

Hamby said that Hans Max Haupt told him that Herbert Haupt, a spy, a saboteur, a paid agent of the German government, had told him that if he was caught he would get life, that the father would be an accessory. Hans was merely repeating
1537 what Herbert Haupt told him, but the important thing about that, as I see it is this:

Herbert told Hans that if he were caught he would get life. Herbert said that we were so soft here that he could get away with something like that. Herbert believed the Americans did not realize that there was a war on.

I am very serious about that. We know that Lieutenant Koppe was in charge of these boys, these men, and we know Lieutenant Koppe lived in this country, and we know that these men were well trained.

"It is not treason to harbor a man." Let me ask you this question: Supposing a spy and saboteur came into this country to do damage. Suppose also that every true, loyal American locked his doors to keep out the man as though he was plague ridden though he was a pariah, untouchable? What would happen to that man? What would happen if nobody would take him in?

First of all he could not eat, could not sleep. He would have no place to stay. He would be forced to roam the streets until he was tired. He would not be able to eat, he would not be able to do a thing.

1538 That, ladies and gentlemen, is the duty and obligation of every decent, loyal American citizen who believes it down in his heart when he says that "I swear to uphold and defend the Constitution and the laws of this country." That is the obligation of every American citizen.

You cannot have spies in this country; you cannot have saboteurs in this country; you cannot have paid agents of the German government in this country; you cannot have paid agents of the German government in this country roaming our streets doing a successful mission in sabotage if people turn them out of their doors, keep them away, because they have no place to go.

This mission was unsuccessful. It was unsuccessful because of the alertness of the FBI. Let us think for a moment of the awful consequences if it had been successful. Let us think about that for a minute. Is not that the thought you should have

in your mind when you go back into your jury room and somebody says "I feel kind of sorry for this defendant"? Is not that a thought to have?

If it were not for the Federal Bureau of Investigation,
1535 if this mission was successful, what would have happened?

The aluminum industry, the light metals industry would have been crippled and bombers that now fly in the air over the enemy country, dropping their bombs might not be there.

It is a serious business, is it not? We have yet to regard this matter as it is. Do you think for a moment that I enjoy prosecuting that man? Do you think I enjoy it? No, no; I do not enjoy it at all, but I have a duty to perform. I am going to perform that duty to the utmost of my ability. I assure you of that, ladies and gentlemen.

I am not going to allow any misplaced sympathy to prevent me from doing my duty and to do what Justice Sutherland said and that Mr. Warnholtz mentioned with respect to striking hard blows but fair blows. If I did, I would not deserve to be an American, I would not deserve to represent the government of the United States in this prosecution.

While we are on that striking of hard blows but not foul blows, let me recall your attention to my opening statement. I told you at that time that the government expected to prove certain things. Have we done it? Have we proved them?
1540 What does Mr. Warnholtz say?

Mr. Warnholtz says in effect this: "Why what Mr. Woll said was the most damning thing in the world, he said he was going to prove certain things and these were very damning things."

Of course they were. Of course they were. I did not commit them. Somebody else committed them, but if they were damning things what is the objection that he found to it? That I did not prove them? No, no. He pointed out two or three sentences in my opening statement. It took a long time. So I assume that he has agreed that I have proved everything else, but he picks out two or three things and he does not say that the government did not prove them.

He says, "Sure, the government proved them, they proved them, but we do not like the person by whom they proved them."

Well, of course, one thing is certain and that is the government does not go and say "Mr. So and So, I want you to be a witness, I want you to testify to these things."
1541 We do not go out on the street and pick up witnesses.

We find the people who know the things. Then we bring them into a court and we say "You tell the Court and the jury those things."

Can we help if a man is in the penitentiary? We present the evidence to you. Of course, I assume— as a matter of fact I know that there is not one person in this jury box now who believes that the government would induce these people to tell falsehoods so I am not going to mention any more about that. That, I assume is understood.

Now, then, there has been a vicious attack on these two men from Joliet, a very vicious attack. In making this attack the attorneys for the defendant would like to have you believe that is the only evidence the government has, that these people are not corroborated in any way.

Let me ask you a question: Did Hirsch say anything about what Hans Haupt told him? Did Robe say anything? Of course, they did. What did they say? Hirsch and Robe, I think, said that Hans told them that the boy told him about his trip to Germany when he left America. That he told him of coming
1542 back in a German submarine; going to some kind of a school in Germany "an intelligence school." I think they used that term; coming back here on a German submarine. Are Hirsch or Robe inmates of a penitentiary? No. They are the type of men that Mr. Warnholtz classified as being very upright and upstanding men, men whose records in the past years have been investigated before they became members of the Federal Bureau of Investigation. What is he going to do with that testimony? Throw it out of the window? Are you going to ignore it? No. There has been no impeachment of any kind on anything that has been testified to by a number of these witnesses.

Hirsch and Robe also stated that Hans told them that on the subsequent night, Saturday night, that they went to the Wergins. Supposing you were inclined to find fault with the testimony of Hamby and Norris. Suppose also you wanted to find fault with the testimony of Hirsch and Robe. The fact that they were at the Wergin house was proved by another witness, by Miss Demmler. What is the object of the argument of the defense counsel? Are you to disregard; throw out entirely, all the government
1543 witnesses? That has to be their argument. There is not anything that stands alone in this case. There is not a thing that stands alone in this case.

A number of agents said that Herbert Haupt went into that home every night that he stayed there. There are more than two witnesses to that.

When Hans went down to purchase the automobile there were more than two witnesses that saw him in there together with Herbert. At that time we had two people in the place when Hans purchased it for Herbert. You have got to conclude everybody

for the government is lying. Do you want to take that step? Do you want to come to that conclusion?

If you do, then what have you got? What evidence has the defense introduced? They have introduced evidence that Hans Haupt worked. They had Erna Haupt on the stand. They had her testify that as far as she knows her boy is dead. Is that a defense to treason? Is that any defense to treason? Use your common sense. Of course not. But the significant thing, the significant thing is that this woman was placed on the stand; that there was a woman who, according to the government's
1544 evidence, could say "we did not go to the Wergins, we did not go to the Froehlings, Herbert did not say anything about being in Germany, Herbert did not say a thing about coming back on a German submarine. Herbert did not say any of these things."

Did she do it? The opportunity was there, the time was there, the time for her to give her reasons for the purchase of an automobile, the reasons for harboring the boy, the reasons for going to the Optical Company was right then and there on the witness stand and not in final argument when the ingenuity of counsel can attempt to raise doubt in your mind with respect to evidence.

We are not speaking at random. We are not speaking our random thoughts. The defense attorneys frankly admit they are standing between this man and punishment.

Let us just consider Hamby and Norris for a moment. I cannot in the short space of time that I have even attempt to straighten out all of the inadvertent misstatements made by counsel. I can only hope that your common sense has pointed those out to you and to attempt to point out some that I think are more important.

1545 The first thing is this: "Everybody threatened Hans Haupt at the jail; he was in a hostile atmosphere; nobody liked him."

What is the evidence? The evidence is that Hamby said he felt sorry for him; he was in the same boat; he was in jail. Norris said also that he was sympathetic. Hamby got cigarettes for Hans, got cigarettes for him. You heard him say all the things that they did for Hans Haupt while he was in the jail. No one mistreated Hans Haupt in that jail. No one mistreated him at all.

You know it is a nice thing to pick out some small isolated incident, particularly if you have not got much to talk about, and build it up to huge proportions. That was done in the situation involving the so-called statement that Erna Haupt was being mistreated in jail. I do not know why they brought that out. I suppose they felt that that might be something that

might "chill" you. It does, but what is the fact about it? The fact is that some convict made that statement; that then Hamby told Haupt, he said, "Do not believe that, nothing to that. If she is in the County jail—I do not know whether she is or
1546 not—she is taken care of by women guards. Do not worry about that."

Did Hamby hate Hans? Did Hamby hate Hans when he told him that, to assure him?

Hans told Hamby quite a few things. I wonder why he told him them, why did he tell Hamby these things? Here was a man who was charged with treason. Here is a very cunning man, a very shrewd man, make no mistake about that. Here was a very cunning man, a shrewd man, a man who was thoroughly imbued with the principles of the German Reich. Here is a man charged with treason. One of the first things that comes to his mind is: "Well, I have got to get help. I may have to have a lawyer."

Hans hears Short's name: "What kind of a lawyer is Ben Short?" He has perhaps heard of him. He asks Hamby. Why? Hamby, the old-timer who has gone through all these things. Hamby is telling the boys how to take care of a lot of things. He is some sort of a leader around the boys, and he is telling them how to handle their cases. Hans has got his secret in his heart. He has got that secret in his heart that is worrying him. He is worrying, "What can a jury do, what can a court do to me?"

1547 Hans is figuring now: "How am I going to get out of this thing?" He has to take the best counsel that he can get. He has to take the best counsel that he can get. He begins to ask Hamby questions. Hamby has been kind to him and he thinks Hamby knows what he is doing. He thinks Hamby can advise him.

He says "What kind of a lawyer is Short?" Then they get into a conversation, and he says, "Well, how about me? What is going to happen to me?"

Hamby says to him, "Well, I do not know what is going to happen to you, I do not know what you are charged with. What are you charged with? How can I help you if you do not tell me?"

"Well, I am charged with having Germany money."

Hamby said "Real German money?"

"Not real Germany money, it was real American money, but it came from Germany."

Hamby said, "How did you get it?"

"Well, my son gave it to me."

He gets into a discussion about that point. He has got to confide in somebody; he has to tell somebody what is in his heart.

It must come out.

1548 He said to Hamby: "My son gave me money he got in Germany."

He said, "How did he get in Germany, how did he get to Germany?"

"Went from Germany, that is all."

"What did he do when he got in Germany?"

Then the story comes out. Does that not strike you as being logical, being sensible? Does that not appeal to you as being the perfectly natural thing that did happen? Of course it does, but as I have said, how are you going to dispute Hirsch and Robe?

We come to what I consider to be one of the most important bits of evidence. That is the testimony of Zermer. Mind you, Hans has straightened out all difficulties that he might have had with the draft board, or Herbert had and Hans no longer has any worries on that score. Herbert is staying at his house.

Hans asks Zermer to get a room for Herbert. Why? He was scared. He also later on said, "I want to use your address so that Herbert who is going to travel around a lot can send mail

1549 to your address, then you bring it over to my house."

Ladies and gentlemen, supposing your boy, or a relative of yours went away on a perfectly innocent trip to Mexico; he went down there for a vacation; then he came back, came back to your house. He is a boy who has always stayed at home with you, always stayed at home.

Now, this boy says to you, "Mother, I am going to travel around a little bit," and it is perfectly innocent. You will say, "All right, son, drop me a line now and then." He would write you, write you at home, he would write to you at home. Why should you say or why should you have him write to some one else's home if it were a perfectly innocent thing, if the boy had just planned to go to Mexico, if he is going to take an innocent trip, travel around, would you go to a neighbor of yours, or some one living away and say, "Mrs. So and So, my boy is going away. He is going to write me in care of your house. Then you go ahead and bring the letters to me." Would you do such a thing if it was perfectly innocent? Can you conceive of any mother or father, if the purpose is innocent doing that?

1550 That to me speaks more eloquently than any testimony of Hamby, Norris, Hirsch, or Robe, or any of them. That is what defense counsel have been worried about throughout this trial, because that is the touchstone. That is a revealing light of that man's knowledge of the purpose of his son being in this country.

Now they point also to the time when the first negotiations had been made for the car. Let us see how this all matches up. The

boy buys a car. Does he want a car for the purpose of taking his girl out as defense counsel wants you to believe? It was not for the purpose of taking his girl out because Hans Haupt told the purpose to Zermer. He did not say to Zermer that Herbert wanted to take his girl out riding in the car. No; they talked about the car. Then Hans said, "My boy is going to travel around a lot, travel around anyway in the car." That is the purpose of buying the car. The boy is going to travel around a lot. What is he going to do travelling around a lot? He is going to travel around with the companions who landed with him in the
1551 rubber boat from the German submarine. That is what he is going to do.

You recall Burger's testimony, do you not? Herbert was instructed to get a car for the group, and to find employment—no: to get information from the optical company and if necessary find employment to get it. I can just see that picture.

Mind you, these people were laying low for a while. Burger told you there was to be a meeting July 4. Herbert hit Chicago on June 19th. They were to lay low for a while. Nothing particularly to be done except the preparation, to get ready; to get ready. So Herbert comes home.

Now, then, he goes to the Simpson Optical Company. Hamby said that Hans told him he was going there to steal some plans. Burger told you that he was instructed to get some plans. To do it Herbert goes to the optical company to secure employment.

What was the mission that the saboteurs were supposed to have?

Each one had to have a front, of course. Of course, they
1552 had to have an air of respectability in this country, to carry out these things, to appear to be hard working people. That was necessary for the success of their venture.

Now, then, having negotiated that, getting the job, getting a car—this did not have to be a permanent job arrangement or anything like that. It was to establish a front only, work a few days, if necessary, go out and get the car, and plant the explosives. If necessary quit the job—after you get a front, sneak out of the place, but keep your front as long as you can.

Mind you, operations are not to begin at once. The preparations were now in state of being, in existence, and he told his father of the preparations.

Then the father, who said that he preferred Germany over America, fell in with the plan, this father who said if we ever got into a war he would crawl over to the enemy lines and give our position away, this father who sent his boy to the Bund Camp up in Michigan, this father who taught him to love Germany; this father who was imbued with the Nazi principle of "Ein volk ein reich" "once a German always a German." That is not the

1553 view expressed by our loyal Americans of German decent:

There is no room in this country for divided loyalty. There is room only for one loyalty and that is 100 percent loyalty to America. This man was 100 percent loyal to the present regime in Germany.

They tell you that "Perhaps he should not have made these statements, that we all some time or other have made statements, foolish statements."

Do you know of any person of your acquaintance who has said that, "rather than see my boy fight against Germany I will kill him myself." Did you ever hear any of your acquaintances say anything like that? Of course, some of these statements were made in 1937, 1938, and 1939 and 1940. Some times these statements projected themselves beyond the present to peer into the future, and that is what Hans did in those statements when he said, "in the event, if there is a war, if there is a war," mind you, "and if there is a war between Germany and America, then I will crawl over to the enemy lines."

How can you come to any other conclusion in the face of this evidence but that this man was imbued with the spirit of
1554 Germany, and that when he took his oath of citizenship and foreswore allegiance to any foreign prince, potentate, state, or sovereignty, and especially the German Reich, that his heart was still with the "fatherland."

Throughout this argument the defense attorneys have stayed away from talking facts. They talked about Eggert. Did you hear Mr. Warnholtz say anything about $900 given to Mr. Eggert? Did you hear him say a word about it? He said Eggert was an honest man, but that Eggert was threatened with the concentration camp. Does that make sense? This man is an honest man, but he lied because he was threatened? If he lied he is not honest. You see the thing is inconsistent. The only thing defense attorney can be attempting to do is to avoid being forced into a position of saying the government witnesses were all liars and did not tell the truth. He contends on one hand, as you might say, that they told the truth, but on the other hand that they lied, because of threatened action.

Let me ask you a question: You have heard Eggert testify. Did Eggert say at any time that he was threatened with being sent to a concentration camp? In case you do not recall, I make
1555 the statement right now that he did not.

Was Zermer confused as to whether Hans Haupt was home when he first got there that night? In case you do not know, I say that he was not. Zermer's testimony was that when he got to the home of the Haupts that Mrs. Haupt was there and later on Hans and Herbert came in. You do not want to allow these

things to confuse you. The only important thing in this case, the only important things are these. Did we—did we prove these overt acts which the court will submit to you by two witnesses? Have they told you that we did not prove the purchase of the automobile by two witnesses? No. Have they told you that we did not prove going to the Grunaus and the Kochs by two witnesses? No.

Have they told you that we did not prove the staying in the Haupt home on the days alleged in the indictment by two witnesses? No. That has been proven definitely.

Any one of those overt acts, if you find they have been committed, and they were proved by two witnesses, would authorize you to return a verdict of guilty, would authorize the return
1556 of a verdict of guilty?

There are going to be some overt acts which the Court is going to tell you are withdrawn. Let us not have any misunderstanding about this. It is important. These overt acts are not withdrawn from your consideration for all purposes. They are not withdrawn. You are entitled to consider the proof of those overt acts. You must consider the proof of those overt acts. They are not taken away from your consideration for all purposes.

The only thing is that those overt acts that the court says are withdrawn, are withdrawn as a basis authorizing conviction because there is not—I say frankly—there have not been two witnesses to that act. Such an act is the act that Zermer testified to. That does not mean that you are to forget Zermer's testimony. You have it and you should give it all the weight it is entitled to. You should do that. But you cannot say that act itself would authorize a verdict of guilty, because Zermer is the only witness to it. Let us see. In the purchase of the automobile you say to yourself, "Was the purchase of this automobile in furtherance of this treason?" Can you say to yourself it was?
1557 Let us look at Zermer's testimony to find out just the intent of this thing? You look at Zermer's testimony and you come to the conclusion that the man knew about his boy's activities and he wanted that car because the boy wanted to get around and he wanted to get this mail drop because they wanted it, they needed it. You can use that testimony of Zermer's as given in concluding the intent concerning that act, concerning the use for which that automobile was made. So nothing is withdrawn from your consideration in the sense you cannot consider it. Nothing at all.

There has been a lot of talk about "purpose" and all this and all of that. Mr. Warnholtz has the effontery to stand up before you and to tell you that if there had been a meeting at the Wergin home on Saturday night there is no one who could say anything about it. Erna Haupt could have said about that. Erna Haupt

could have told you all about it. There is a question for you, why did she not? She could have told you all about that particular night but she did not, and why did she not? She could have told you about Sunday night. She did not. Why did she not?

1558 She could have told you why the car was purchased, whether it was because they had used Herbert's old car, but she did not. She could have also told you why they went to the optical company, but she did not. The opportunity was then and it is not now through the mouth of defense counsel.

There has been some mention made here of the life and liberty of this man. I do not know why counsel said that. I strongly suspect why, but let me say this to you, ladies and gentlemen: Your duty is only to determine the facts in this case and return a true verdict. You have nothing whatsoever to do with the punishment his Honor, Judge Barnes, may inflict in the event you find him guilty. That is his responsibility, not yours. It is up to him to decide what punishment may be given and you should not allow that for one minute to enter into your deliberations. The Court will instruct you that it is his duty, not yours. Your duty is clear cut. Your duty is great, to decide this with the impartiality of a neutral judge, as a person with common sense, as a person free from prejudice or free from sympathy, a person who realizes

1559 the dire consequences of his verdict or her verdict, either for the defendant or for the government. As a person who realizes that it is not good citizenship, it is not being a good juror to allow a man, guilty of crime, to escape because of misplaced sympathy. As a person who realizes that if he concludes beyond a reasonable doubt that this defendant is guilty, it is his duty—a duty in the stern face of danger—to find him guilty if he believes that he has been proved guilty.

It is your duty to America; it is your duty to the 130,000,000 people of this country if you believe him guilty to find him guilty. It is your duty under your oath, and it is your duty as a citizen, and it is your duty as an American.

Mr. Bertram has spoken of the two jewels of American life, freedom and justice. We have the jury system in this country, that is one of our bulwarks. We have also the protection thrown around a man accused of crime that he must be found guilty beyond a reasonable doubt and he is presumed to be innocent until he is proven guilty.

The COURT. Your time is up.

Mr. WOLL. May I close in two minutes?

1560 We must keep our democratic system. We must keep the principles that we love, and the only way we keep this is by following our duty as a jury, by following our oaths

and obligations, to uphold the Constitution and the laws of this land.

The COURT. We will recess at this time, ladies and gentlemen, until ten o'clock tomorrow morning, at which time I will instruct you with respect to the law applicable to this case.

In the meantime do not discuss this case with anyone, or permit anyone to discuss it with you, and if anyone should attempt to communicate with you about the case report that fact at once to the Court.

Again I enjoin you to refrain from reading about the case until after you have completed your services as jurymen and women. Report here tomorrow at ten o'clock, please.

(Whereupon an adjournment was taken to Thursday, June 8th, A. D. 1944, at the hour 10:00 o'clock a. m.)

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1561 IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION, AT CHICAGO

UNITED STATES OF AMERICA

vs.

HANS MAX HAUPT

Before Hon. JOHN P. BARNES, Judge, and a Jury

Thursday, June 8, 1944, 10 o'clock a. m.

Parties met pursuant to an adjournment.

Counsel present: Mr. J. Albert Woll, United States District Attorney for the Northern District of Illinois, Eastern Division, at Chicago, and Mr. Earle C. Hurley, and Mr. Richard G. Finn, Assistant United States District Attorneys for the Northern District of Illinois, Eastern Division, at Chicago, appeared for the United States of America; Messrs. Paul A. F. Warnholtz, Frederick J. Bertram, appeared for the Defendant.

* * * * *

1562 (Thereupon the following proceedings were had outside the presence and hearing of the Jury in the Court's Chambers:)

Mr. WOLL. We have two suggestions in regard to the instructions, if your Honor please.

Mr. FINN. They are with reference to number 55 and 57.

Mr. WOLL. The last sentence in 55, the first word of the last sentence we suggest it might be taken out, the word "criminal."

Mr. FINN. Criminal intent.

The COURT. I think that would be better to strike out the word

"criminal", on the fourth from the last line on 55, strike out the word "criminal".

Mr. Finn. The next one with reference to number 57. We would like to strike out, "the best" and "an index".

The Court. That may be better.

Mr. Finn. An index to his intent.

The Court. The word "criminal" is stricken out.

Mr. Bertram. In 59 the word "criminal" is stricken out?

The Court. 57. And the words "the best" is stricken out and the word "an" is substituted in the first and second lines.

1563 Now, sheet 1 I referred to, calling particular attention to the overt acts which are withdrawn, and the overt acts which are submitted will be attached to the indictment by clips in the form which I now indicated to you.

Now, is there any objection to the form of the verdict?

Mr. Finn. We have no objection to that.

Mr. Warnholtz. No objection to it, your Honor.

Mr. Bertram. If the court please, we would like to have the record show that we object to the refusal of all the instructions that the court may have refused; that we object to any and all modifications to the instructions that the court may have modified upon those that we have offered, and we would like to renew all our objections now so that we do not have to say anything when your Honor closes in the presence of the Jury about objection.

The Court. Very well.

Mr. Bertram. We renew the objection made heretofore with reference to all matters we have spoken about in the chambers.

Mr. Woll. I would like to get the record straight now on this particular thing. The other day we had a conference on
1564 instructions, and at that time you stated what objections you wanted to the instructions.

Mr. Bertram. Yes; and we renew all objections we have stated, and they are in the record, and all comments made to strike them.

Mr. Woll. The objection was made at the time the instructions were gone over and proposed.

Mr. Bertram. Our objections are now renewed, that is right, to everything that was said before. We want to have the benefit of what was said in the chambers. We do not want to have it in the presence of the Jury or make any statements that might be embarrassing.

The Court. Very well. That will be understood.

Mr. Woll. One other matter, if your Honor please. Yesterday, the Defense Attorneys did refer to the Hamby letter. I think that should go to the Jury. Now, Hamby related the letter was written, and you referred also to that. I think it was referred to.

The Court. Let it go to the Jury if it was referred to.

(Thereupon court and counsel returned to the courtroom and the following proceedings were had:)

The COURT. Bring in the Jury.

1565 (Thereupon the following proceedings were had in the presence and hearing of the Jury:)

The COURT. Good morning, ladies and gentlemen.

The JURY. Good morning.

(Charge to Jury omitted. Printed side page. 80 ante.)

1601 Mr. FINN. Your Honor, may I respectfully call your attention to one here, I believe, overt act, number 16. I believe in reading the overt act number 16, you read the date with reference to the Warner Motor Sales, the second overt act with reference to the Warner Motor Sales, I believe the record shows you read it the 12th day of June rather than the 24th day of June.

The COURT. In the 16th overt act, which I read,

1602 it should read as follows:

"16. Said Hans Max Haupt on or about the 24th day of June 1942, while at the Warner Motor Sales, 958 Diversey Parkway, Chicago, Illinois, did—" and so forth.

Any other suggestion from either side. Will you swear the Marshals, Mr. Clerk?

(Thereupon the Clerk of the United States District Court administered the oath to the Marshals.)

The COURT. Have you assembled your exhibits, gentlemen?

Mr. WARNHOLTZ. The Defendant has; yes, your Honor.

The COURT. You may hand the exhibits to the Marshal. Now, those are the exhibits of all of your gentlemen?

Mr. FINN. That is correct.

The COURT. Now, I understand that this is the proper time for the discharge of the two alternate jurors. Is that the understanding of counsel for both sides?

Mr. WARNHOLTZ. That is right, that is our understanding.

The COURT. I understand both counsel now desire the two alternates discharged.

Mr. WOLL. Correct, if your Honor please; yes.

1603 The COURT. And you so understand?

Mr. WARNHOLTZ. Yes, your Honor.

The COURT. The alternate jurors may now be discharged from further consideration of this case with thanks of the court.

The remaining twelve of you may depart with the Marshals to consider your verdict.

(Thereupon the Jury retired to the jury room to consider their verdict at 11:22 A. M. Thursday, June 8, 1944.)

The COURT. I am sending these instructions into the jury room together with the indictment and that one page which I made reference to by number.

Mr. WARNHOLTZ. All right, your Honor.

Mr. WOLL. All right.

Which were all the proceedings had in the above-entitled cause including opening statements, arguments of counsel, instructions, and all other proceedings in the above entitled cause to date.

* * * * *

1604 (On June 8, 1944, at the hour of approximately 4:50 o'clock P. M., after the jury had retired to deliberate upon the verdict and before a return thereof, the following proceedings were had in chambers:)

Mr. WARNHOLTZ. There was a point I wanted to take up in respect to certain instructions. I refer particularly to instructions 37 and 53 and 54. In reading these instructions I would suggest that as far as I can digest them, that instruction 37 can never apply if instructions 53 and 54 are also existing instructions in this matter. Instruction 37 reads: a

"If you are not satisfied, beyond a reasonable doubt, that this defendant's intention and purpose in acting as he did, that it was evil, that is, if you are not satisfied beyond a reasonable doubt that the defendant intended to aid and comfort the enemies of the United States, the defendant must be found not guilty. If you believe the defendant's intention in doing what he did

1605 from the period of June 17, 1942, to and including July 17, 1942, was not in any way to injure the United States, but merely to assist his son, Herbert Haupt, as an individual, as distinguished from assisting him in his purpose, if such existed, of aiding the German Reich, or of injuring the United States, the defendant must be found not guilty."

With that instruction the defense is entirely in harmony, but if we take instructions 53 and 54 as I construe them it would read about like this—I am not quoting from the instruction—if the defendant at all knew about the mission of his son then whatever he did with reference to any one of the overt acts must be construed as having been done with the intention of injuring the United States.

If that is true, if my construction is as I believe, true, then instruction 37 is unnecessary. It would then be quite immaterial whether a man is a father or is a relative or is a friend, or even a total stranger. A total stranger or friend or relative who has no knowledge of what is called in this case "the enemy mission" can of course never be found guilty. Hence, in such case it would not be necessary to put that in the instruction.

1606 If I do not know that I deal with an enemy how can I ever be found guilty?

The COURT. What is it you want? What is your motion?

Mr. WARNHOLTZ. To have instructions 53 and 54 either completely eliminated or modified.

The COURT. Motion denied. Never in the thirteen years that I have been here have I given counsel the opportunity to make suggestions and objections to instructions that I have given them in this case.

I asked counsel for both sides for your instructions days ago. After your instructions came in I prepared a form of instructions which I handed to you days ago, and I took your suggestions. We spent from ten o'clock until approximately one o'clock considering those instructions or suggestions before the arguments began as well as at other times.

We have considered the instructions and we have done the best we can. The jury is instructed and your motion is denied.

I think the instructions are as clear as we can make them for the jury. If the jury does not understand them it will be because the jury cannot understand instructions in a treason case.

1607 Mr. WOLF. I would ask permission to point out how long the jury has now been deliberating.

The COURT. They have been deliberating since 11:28 and it is now 4:55.

Mr. WARNHOLTZ. Your Honor, I may state—the motion is denied—I raised the same objection at the time we were discussing it. I maintain that instructions 53 and 54 completely violate——

The COURT. It would just confuse the jury by sending in another instruction and emphasize something all out of proportion. No matter how much we tell them about the instruction or what has been said, they could never refrain from overemphasizing what we would now send to them.

Mr. BERTRAM. May we say we pointed out the very same objections to your Honor?

The COURT. Yes; they have all been pointed out and all these points have been raised. I do not think we have to take any more time on that.

Mr. BERTRAM. All right.

(Whereupon counsel withdrew from chambers:)

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1608 In the District Court of the United States for the Northern District of Illinois Eastern Division, at Chicago

UNITED STATES OF AMERICA

vs.

HANS MAX HAUPT

Before Hon. JOHN P. BARNES, Judge and a Jury

Friday, June 9, 1944, 10:00 o'clock A. M.

Parties met pursuant to an adjournment.

Counsel present: Messrs. J. Albert Woll, Earle C. Hurley, Richard G. Finn, appeared for the United States of America. Messrs. Paul A. F. Warnholtz, Frederick J. Bertram, appeared for the Defendant.

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1609 (Thereupon the following proceedings were had in the Court's Chambers.)

The COURT. A few minutes before I sent for you gentlemen, I guess I sent for you about a quarter of ten, half past nine I received this communication from the foreman of the jury:

"JUNE 9, 1944.

"Judge BARNES:

"May it please the Co rt to grant the request of the jury that the testimony of Messrs. S ort, Hirsch, and Robe be read to them at this time.

"JOSEPH M. CALLNER, *Foreman.*"

Short, I don't know who he is.

Mr. FINN. Ben Short.

The COURT. Oh, Ben Short; that is right, Short.

Mr. FINN. And Hirsch and Robe.

The COURT. Hirsch and Robe, what are your ideas in respect to that request, gentlemen? How do you feel about it, Mr. Warnholtz?

Mr. WARNHOLTZ. Well. May I ask this, your Honor; is it customary to send in some testimony——

The COURT. No; what would happen, they would be put in the jury box and then I take it the best way to present it would
1610 be for counsel for the party who presented the witness, to read the direct examination and for his opponent to read the cross-examination. That would be the best way to present it, and then the testimony of Messrs. Short, Hirsch, and Robe would be read to them and having been read to them then they would retire.

Mr. WARNHOLTZ. Well, personally your Honor, I do not favor that very much.

The COURT. How do you feel about it?

Mr. WOLL. What do you say Mr. Warnholtz?

Mr. WARNHOLTZ. I do not favor it very much.

Mr. WOLL. Well, I will be frank with the Court. I think if the defense object to it it might be dangerous to do it aside from the question——

The COURT. Oh, I don't believe so. I think here is a jury we assume, twelve reasonable people trying to perform their duty to the best of their ability. Now they sat there—we started to get the jury on Monday and this is the third week. There were quite a number of witnesses and they have labored with this case for nearly twenty-four hours and they say, "Now we would like to hear read to us the testimony of Messrs. Short, Hirsch, and Kobe."

Now, we ought to forget the fact we lawyers do so many unreasonable things—I don't know why we do—but the jury, they are reasonable people and they say, we are trying to decide this case and let us hear the testimony of these three men. I can't see any good reason why that shouldn't be.

1611

Mr. WARNHOLTZ. I will state my reason. This testimony goes to the intention—I still feel, as I did yesterday when I came in here, when I made an objection the other day that instructions 53 and 54 cancelled out instruction number 37.

The COURT. You are just getting off altogether from this subject. Altogether.

Mr. WARNHOLTZ. It is our contention, your Honor——

The COURT. You are getting off onto another subject. It is just a question, really, in fairness to these people that have given almost three weeks of their time to try this case. They make what to anybody on the street would seem to be a reasonable request. That is the way I feel about it. I do think if it is read to them they should be cautioned, we should say to them now, you must bear in mind that you are hearing this testimony for the second time at your request. You are hearing it for the second time, you should exercise caution to see that you do not give it more weight than the testimony of other witnesses. Bear in mind that you are hearing it the second time, and consider it just as though you heard the witnesses, together with all other testimony. With that instruction, I can't see any reason in the world why they should not hear the evidence if you want to have a fair trial. Mr. Short, what did he say? And the witness Hirsch, I don't remember exactly.

1612

Mr. WOLL. Hirsch said he was upset.

Mr. WARNHOLTZ. He didn't just say that on that question? Yes; that is right.

The COURT. I haven't any doubt about it.

Mr. WOLL. Most certainly I don't have any objection to any action on the part of your Honor. I feel as you do that this case is an important case and has been an expensive case and there should be a determination one way or the other.

The COURT. I do not care so much about the expense, but we shouldn't waste our time, particularly in these times. We must assume here are twelve people trying to do their duty to the very best of their ability and they make, what seems to be a reasonable request and to anybody that wasn't a lawyer, that would seem a most reasonable request, and merely because we are lawyers
1613 why should it seem unreasonable. I don't see it. I don't know what will happen; which side will benefit. Frankly, I don't care.

Mr. BERRYAM. We pointed out those particular instructions in connection thereto, your Honor, how we felt as to the competency.

The COURT. I don't see how the instructions on the testimony of these three witnesses——

Mr. WARNHOLTZ. The intention question I say on these instructions——

The COURT. I don't think you are talking to the point at all. Of course, you represent the defendant. You represent the defendant. Mr. Short certainly didn't say anything upon which the government——

Mr. WARNHOLTZ. No; they have Hirsch and Robe. Both of them testified to an alleged confession that was made in all respect——

The COURT. Well, my disposition is to read it to them. Now, if I make up my mind it should be read—you presented Mr. Short.

Mr. WARNHOLTZ. That is right, your Honor.

The COURT. And the government presented Hirsch and Robe.

Mr. HURLEY. That is right.

1614 The COURT. Now, do you want to follow in this to the extent of reading the direct examination of Mr. Short and the cross-examination of the other folk or do you want to take no part in it? It makes no difference to me.

Mr. WARNHOLTZ. I would rather not. That would be acquiescence in it. I don't know those three instructions. I can only repeat that once more again——

Mr. WOLL. I suggest the Court read it.

The COURT. No; I don't want to read it. I will let the reporter read it. No; I don't think you waive it. In fact, I will make a ruling and I will say the reading is done by the direction of the Court.

Mr. HURLEY. That wouldn't be a waiver. I will agree as far

as that is concerned to his saving the point in having it read to the jury at all.

The COURT. You are objecting to it being read? In fact I will direct it. I think that would be fair. I don't want you to waive your point. You have a responsibility. I think the request of the jury is reasonable. If you don't feel right about it, complying with it, I think I will direct you to read the direct examination of the witness the defendant produced, then the government
1615 read the direct examination of the witnesses they produced and the cross-examination of the defendant's witness and vice versa and that will be the directions of the Court. I understand you will do that without any further protest. I don't want any scene in here.

Mr. WARNHOLTZ. No; I don't make scenes, after saving an objection and exception.

The COURT. You don't think it should be done and I think it should.

Mr. WOLL. Would your Honor consider a motion that I would like to make that perhaps prior to that time we give the jury an instruction along the line in the Allen case, 164 U. S. 492.

The COURT. No. I won't give that instruction. I won't give that instruction.

Mr. WOLL. I might say that has been approved in numerous decisions. We have five or six or seven decisions on that point.

The COURT. No; I won't give it. I think I used it as frequently as anybody, but I won't give it in this case.

If I get your transcript—now wait, Miss Green bring your book here. I want to get an instruction.

1616 Mr. WOLL. May I make a suggestion as to the instruction you suggested might not be given and the instruction be finally wound up by saying that this is not considered, they should not arrive at their verdict, they should consider all the evidence in the case.

The COURT. I think they should be cautioned not to give undue weight to this evidence.

Mr. WOLL. I don't want anything said that would indicate there was such and such or was not important.

The COURT. Take this, Miss Green and write it up for me.

"Pursuant to the written request of the jury through your foreman there has been read to you a transcript of the testimony of the witnesses Short, Hirsch, and Robe. The jury are cautioned to bear in mind that they have now heard the testimony of these three witnesses twice while they have heard the testimony of the other witnesses only once, and that they shall not allow the fact that they have heard the testimony of these three witnesses twice to cause them to give undue importance or weight to it. The jury

should, on the other hand, consider the testimony of these three witnesses, and that of each of them, as though they had
1617 heard it but once and consider it together with all the other evidence in the case."

Mr. WARNHOLTZ. May the record show, your Honor, at this moment, practically almost to the minute the jury has been deliberating, uninterruptedly for twenty-four hours.

The COURT. Oh, yes; but——

Mr. WOLL. They have been interrupted, of course, for luncheon, and dinner and breakfast this morning.

Mr. BERTRAM. Not by sleep, though.

Mr. WARNHOLTZ. Not by sleep. I think one of the ladies is at least about 65 years old or so.

The COURT. Well, they all appear to be in good condition. This request was made of me nearly two hours ago and the delay was necessitated by reason of the fact that I had to call counsel and the reporter and then my ten o'clock motions interrupted which took my attention for a period of about what, one hour?

Mr. HURLEY. Yes.

Mr. WOLL. You want to take Short first?

The COURT. I think we will take them in the order the jury asked for them. Short first, Hirsch, then Robe.

1618 Mr. HURLEY. I have Short, Hirsch, and Robe's testimony here.

Mr. WOLL. Do you want a copy of Mr. Short's?

Mr. WARNHOLTZ. You mean just now?

The COURT. Have both sides been over this record to see if there is anything wrong with it? I think that is all right.

Mr. FINN. Omit this taken outside the presence of the jury.

The COURT. Omit from 1133 over to where?

Mr. WARNHOLTZ. 1136.

The COURT. 1133 to 1136. Omit those pages, omit 1133 to 1136.

Mr. FINN. Down to where Mr. Warnholtz starts.

The COURT. Yes.

Mr. BERTRAM. Did you say omit something?

Mr. WARNHOLTZ. Yes; what happened in chambers.

The COURT. Yes; all that happened in the chambers. Now where is the other witness?

Mr. WOLL. Hirsch is the next one in order and that starts at page 659. The only thing is the word "won" instead of "son."

The COURT. Where is that?

Mr. HURLEY. Page 665.

The COURT. Oh, that is only a typographical error.

1619 Mr. HURLEY. Yes.

Mr. WOLL. June 20th instead of July 20th, but that is corrected later.

The COURT. Yes; that should be June 20th instead of July 20th.

Mr. WOLL. 666 in connection with that over here at the end of the paragraph, page 666.

The COURT. The British Blockade. I think that is right, "ran through". It is "ran through the blockade" and changed to "of the" running of the British Blockade" on page 667 and "memorandum" instead of "memoranda" on page 672. Now, where is Robe?

Mr. WOLL. Hirsch is at 673, and I think it is short also. Now, at the end of Mr. Hirsch's testimony there is colloquy, I suppose.

The COURT. What page is that?

Mr. WOLL. 672, and then it says Mr. Finn: "All right, that is all."

Mr. Warnholtz says "That is all".

Mr. Bertram says: "I want to make a motion to exclude the last witness' testimony," and then Mr. Bertram says:

"If the Court please, I want to exclude all of the testimony of the last witness regarding statements of the defendant Hans Max Haupt."

1620 Then the Court says: "On what theory?" and then Mr. Bertram says: "As being made, not in open Court, as required by the Constitution," and then the Court says: "What"?

The COURT. What page is that on?

Mr. WOLL. 672.

The COURT. No, don't read the motion.

Mr. WOLL. All right.

The COURT. Well, let us go ahead, gentlemen.

Mr. WOLL. Here is another copy of that one, Hirsch and Robe.

(Thereupon the following proceedings were had in the court room outside the hearing and presence of the jury:)

The COURT. Are you ready, gentlemen?

Mr. WOLL. Yes.

Mr. WARNHOLTZ. Yes, your Honor.

The COURT. Bring in the defendant. Have the defendant brought in.

Mr. WOLL. I think the defense attorney should be with the defendant at this time.

The COURT. Oh, that 's all right. Let him sit back there. Sit right there with him. Bring in the jury, Mr. Marshal. Tell the jury to get ready to come in. Bring in the jury.

1621 (Thereupon the following proceedings were had in the courtroom in the presence and hearing of the jury:)

The COURT. Good morning, ladies and gentlemen.

The JURY. Good morning.

The COURT. I received some time ago, about 9:30 I think it was this morning, a communication from you which reads as follows:

"JUNE 9, 1944.

"Judge BARNES:

"May it please the court to grant the request of the jury that the testimony of Messrs. Short, Hirsch, and Robe be read to them at this time.

JOSEPH M. CALLNER, *Foreman.*"

The COURT. That request is granted and counsel will now, by the Court's direction read to you the testimony of the three witnesses and will you read the testimony, the direct testimony of Mr. Short, Mr. Warnholtz, please?

(Thereupon the direct testimony of Mr. Short was read by Mr. Warnholtz, as follows:)

1622 BENEDICT J. SHORT, called as a witness on behalf of the Defendant, after having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. WARNHOLTZ:

Q. Will you kindly state your name?
A. Benedict J. Short.
Q. Where do you live, Mr. Short?
A. 2552 North Kedzie Boulevard.
Q. In the City of Chicago?
A. In the City of Chicago.
Q. How long have you lived in the City of Chicago?
A. Over sixty odd years; I don't recollect.
Q. Will you talk a little louder, please. It is rather hard to hear.
The WITNESS. I beg your pardon.
Q. What is your business or profession?
A. I am an attorney at law.
Q. You are engaged in the practice of law?
A. I am.
Q. Here in the City of Chicago?
A. In Chicago.
Q. How long have you been so engaged in the practice of law?
1623 A. Fifty-four years.
Q. How many years?
A. Fifty-four.
Q. Fifty-four years in Chicago?
A. In Chicago.
Q. Mr. Short, do you know the defendant Hans Max Haupt?

A. I know him, yes; to speak to him. Know who he is, and talk to him.

Q. Do you see him in the courtroom now?

A. I don't think I could identify him.

Q. You couldn't identify him, you say?

A. I don't think I could out of all these gentlemen here. I don't know whether I could or not.

Q. When and where did you see or meet Hans Max Haupt first?

A. In July 1929, I think, or 1939, with you.

Q. I call your attention to July the 29th, in the year 1942, and will ask you if on that day you had a conversation with Hans Max Haupt?

A. Yes, I did.

Q. And where was that, Mr. Short?

A. County Jail.

Q. Cook County Jail?

A. Cook County Jail; yes, sir.

1624 Q. And where within the County Jail did you see Hans Max Haupt at that time?

A. Well, at that time he was in the hospital. At that time he was ill and he wouldn't come out of his cell, and I had to go to his cell to meet the defendant, to get him out of there, and he refused to come out.

Q. Who was present at the time?

A. You were.

Q. I was with you at the time?

A. Yes.

Q. Do you remember a conversation which you had with the Desk Clerk when we first arrived at the County Jail?

A. Some of it I do.

Mr. WOLL. I object to a conversation with a Desk Clerk, if your Honor please.

The COURT. He answered your question, he said, part of it.

Mr. WARNHOLTZ. What was that conversation?

Mr. WOLL. Was it a conversation, if your Honor please?

The COURT. Sustained.

By Mr. WARNHOLTZ:

Q. Did you have a conversation with Hans Max Haupt?

A. I did.

Q. And who was present at that time?

A. You were.

1625 Q. On that particular day, on the 29th day of July 1942?

A. That is the day; yes.

Q. What do you remember that occurred during that conversation and what was said?

Mr. Woll. I object.

The Witness. I beg your pardon. I don't understand you.

Mr. Warnholtz. I would like to know the grounds of your objection.

The Court. Step in the jury room, ladies and gentlemen.

(Thereupon the following proceedings were had in the court-room in the presence and hearing of the jury:)

By Mr. Warnholtz:

Q. Mr. Short, will you kindly state about how long the conversation lasted between yourself and Mr. Haupt and Mr. Haupt and myself, on the 29th day of July 1942, in the Cook County Jail: approximately how long?

A. I would say it was about one session of the jail, maybe a couple of hours.

Q. Did you during that time form an opinion based on your observation at that time as to whether or not Hans Haupt was sane or insane?

1626 A. At that time I was positive he was insane, the way he acted and talked.

Q. That was your opinion?

A. At that time.

Mr. Warnholtz. That is all.

The Witness. Thank you.

The Court. Now Mr. Woll you read the cross examination.

Cross-examination by Mr. Woll:

Q. Mr. Short, you are associated in the defense of Hans Haupt, or were at the first trial, were you not?

A. At the first trial, I was associated with Mr. Warnholtz.

Q. Were you an attorney of record on that first trial?

A. I am not certain that I was. I usually do file an appearance.

Q. But you did participate in the trial?

A. Yes; I participated in it; sure.

Q. And you examined witnesses also?

A. And examined witnesses and made an alleged argument to the jury.

Q. Mr. Short, did you file any petition in court asking that Hans Haupt's sanity be adjudicated?

Mr. Warnholtz. I object, if your Honor please.

1627 The Court. Overruled.

The Witness. I don't think I did.

By Mr. Woll:

Q. Did you at the time of the trial file any motion before the presiding judge, asking that an inquiry be made as to the sanity of Hans Haupt?

A. Mr. Warnholtz took care of all that. I don't think I did.
Q. Do you know whether any such petition was filed?
A. No, I don't. It was one case I bowed to him.
Q. Your best recollection is no petition was filed?
A. My best recollection.
Q. But you assisted Mr. Warnholtz in the trial of the case?
A. That is all.
Q. Mr. Short, without going through the conversation; I don't want you to do that; can you remember whether or not the conversation you had at that time was mostly in German?
A. No, I don't speak German. Mr. Warnholtz and Mr. Haupt talked in German, sure; yes.
Q. And what portion of that conversation, the time of that conversation, was devoted to talking in German?
A. Well, it is a long time, Brother, I don't recollect
1628 exactly. It was quite a bit, because Mr. Warnholtz talked in German and Mr. Haupt talked in German. All I could do was sit there most of the time.
Q. Of course, all the talking in German, you didn't understand that, did you?
A. No; I didn't know what they were saying.
Q. You don't recognize this man, now, do you?
A. No, I imagine, of course, from my experience, he is over there on that side of the table.
Q. You imagine that?
A. If I met him out in the hall, I wouldn't know him.
Mr. WOLL. I think that is all, Mr. Short.
The WITNESS. Thank you.
The COURT. Now Mr. Warnholtz the redirect.

Redirect examination by Mr. WARNHOLTZ:

Q. Mr. Short, you saw Mr. Haupt for three weeks every day in court, did you not?
A. Yes. If it was three weeks the trial lasted, I did.
Mr. WARNHOLTZ. Yes. That is all. Thank you.
The WITNESS. Thank you.
1629 The COURT. Now, will you read the testimony of Mr. Hirsch, Mr. Woll, the direct testimony of Mr. Hirsch?
(Thereupon the direct testimony of Mr. Hirsch was read by Mr. Woll, as follows:)

EARL HIRSCH, called as a witness on behalf of the Government, after having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. FINN:

Q. Will you state your name, please?
A. Earl Hirsch.

Q. You have been sworn, have you?
A. Yes, I have.
Q. What is your occupation, Mr. Hirsch?
A. At the present time?
Q. Yes.
A. I am in the manufacturing business of men's clothing, in Atlanta, Georgia.
Q. Where do you live at the present time?
A. Down in Atlanta, Georgia.
Q. Now, calling your attention to the year 1942, were you a member of the Federal Bureau of Investigation?
1630 A. Yes, I was.
Q. How long had you been an agent for the the FBI?
A. Since October 1933.
Q. When did you sever your connections with the Federal Bureau of Investigation?
A. January 10, 1944.
Q. Calling your attention to the morning of the 27th day of June 1942, at approximately 9:00 o'clock, can you tell us where you were?
A. Yes; I was parked on the corner of Fremont Street and Webster Street, here in Chicago.
Q. And with whom were you at that time?
A. At that time there were several agents in the car in which I was, and we also had several other cars in the close vicinity.
Q. Now, will you tell us what you observed on that occasion?
A. At a few minutes past nine o'clock on the morning of June 27th, we received radio information from another agent who was watching the Haupt home, that Herbert Haupt was leaving his home, and approximately eight minutes past nine we saw Haupt turn the corner on Fremont down to Webster. At that time, he was taken in custody by myself and other agents.
Q. Was he on foot or in an automobile?
1631 A. No; he was in a car.
Q. I will show you Government's Exhibit 3 for identification, and ask you if you can tell us who that is?
A. That is a photograph of Herbert Haupt.
Q. Now, then, was he taken to the Federal Bureau of Investigation?
A. Immediately.
Q. And did you remain with him during that day and for what period of time afterwards?
A. Yes; practically I was with him almost constantly from that time on until he arrived in Washington for the military trial.
Q. Did you bring him down to Washington?

A. Yes.

Q. Did you remain there during the military trial?

A. Yes.

Q. Now, when he was taken to the Federal Bureau of Investigation that morning, can you tell us whether anything was taken from him?

A. Yes; there were several things on his person that I took from him at that time.

Q. I will show you Government's Exhibit 52 for identification, being a Selective Service Registration Card, Government's
1632 Exhibit 50 for identification, a gold watch; Government's Exhibit 21 for identification, being a Social Security Card, and Government's Exhibit 19 for identification, a ring, and ask you if you have ever seen these before?

A. This is a ring that I took from Herbie Haupt at the time of his arrest. This is a Social Security Card that I also took and my initials are there on the back.

Q. Whose initials are they?

A. Right in the office at the time I took it from him, this is his registration card.

Q. You say, "This." Will you refer to the exhibit, is that Government's Exhibit 52?

A. That is correct, Government's Exhibit 52, I took from Herbie Haupt in the office, and put my initials and the date on the back of it.

This is the watch that I took from Herbie Haupt, except the crystal is now broken.

Q. You didn't break it, did you?

A. No.

Mr. FINN. All right.

Q. Now, Mr. Hirsch, when did you get back from Washington?

A. July 22, 1942.

Q. Now, calling your attention to the time thereafter
1633 were you engaged in the investigation of this Haupt trial here in Chicago?

A. I was.

Q. Calling your attention to the morning of August 5, 1942, were you in the office that morning?

A. Yes.

Q. Were you assigned, after a telephone call from the Marshal, were you assigned to go over and interview Mr. Hans Max Haupt in the Marshal's office?

A. Yes.

Q. And did you go over there alone or with someone else?

A. No; I went over with Special Agent P. D. Robe.

Q. Will you tell us what the time was when you arrived at the Marshal's office?

A. It was approximately fifteen minutes to twelve.

Q. Now, when you got there, just what did you do, and whom did you see?

A. Well, I went to see the Marshal, because Al Johnson, the agent in charge of the Chicago office, told me——

Mr. Bertram. Objection. The explanation of the witness——

By Mr. Finn.

Q. Just tell us, whom did you see?

A. I went to see the Marshal; Marshal McDonald.

Q. Then after that, what happened?

1634 A. He told me that Hans Haupt——

Mr. Warnholtz. Objected to.

Mr. Finn. Leave out the conversation.

The Court. Sustained.

By Mr. Finn:

Q. What did you do?

A. Thereafter went in to talk to Hans Haupt.

Q. Now, where did this conversation take place?

A. In the private room in the Marshal's office.

Q. And who was present at the time the conversation took place?

A. Special Agent Robe.

Q. And yourself and who else?

A. Hans Haupt, the three of us.

Q. Now, will you tell us just what was said on that occasion?

Mr. Bertram. If the Court please, I will object to the conversation had with the defendant outside of court.

Mr. Finn. Outside of what?

Mr. Bertram. Outside of court while he was in custody.

The Court. Overruled.

By Mr. Finn:

Q. Will you tell us just what was said on that occasion?

A. I introduced myself to Hans Haupt, showed him
1635 the credentials I had, and told him that I understood that he wanted to see an agent of the FBI. The three of us then seated ourselves and Hans Haupt said, "That he told me Wergin and his wife were responsible for his son's condition, that is, being apprehended, but he said, he was very mad at them, and wanted to testify against them in court."

Mr. Bertram. I object.

Mr. Finn. Strike that out and start over again, if we may.

The Court. I said and he said, if you will, please.

Mr. FINN. If you will, please, let us have what he said and what you said, the best you can remember.

The WITNESS. Do you want me to start?

Mr. FINN. If you will, please.

The WITNESS. When I walked into the room I introduced myself to Hans Haupt. Showed him the credentials. The three of us, Special Agent Robe, Hans Haupt, and myself sat down in chairs in the private room. Hans Haupt said, "That he was very mad at Otto Wergin and his wife, because he blamed the predicament of his son on them, and he wanted to testify in court against them."

Mr. FINN. Yes.

The WITNESS (continuing). He then said that on
1636 Saturday night, July 20th, that his wife Erna Haupt, himself, and Herbert Haupt went over to the Wergin home on South Wood Street, and at that time in the presence of all present, Herbie Haupt told a complete story of his trip to Mexico. How he contacted the German Consul there and how he obtained a passage to Japan, and in Japan they were met by the German and Japanese Consul; thereafter they ran through the British Blockade on a boat and landed in France. Hans Haupt then said Herbie Haupt related that he was in an Intelligence School. He didn't exactly specify just what it was. He said an Intelligence School, and that he had a huge sum of money to use in connection with that over here.

Hans Haupt then said Otto Wergin said he wasn't a dummy and that he knew the mission Herbie Haupt was on. He also said he served in a similar capacity during the last World War——

Mr. FINN. He said this to you?

The WITNESS. That is, Wergin served in a similar capacity in the last World War in Egypt——

Q. Are you relating what Hans Haupt told you Wergin said on that occasion?

A. Exactly.

Mr. FINN. Go ahead.

1637 The WITNESS. Hans Haupt then said that Wergin offered his services to Herbie Haupt in his activities in this country, because he could use some of the money Herbie Haupt had.

Q. Now, was there any further conversation at that time?

A. Yes. Hans Haupt then related on Friday night June 19th, he and his wife went over to the Froehling home and while at the Froehling home, Herbie Haupt related the story in the presence of the Froehlings and the Haupts about his trip to Mexico and Japan and the running of the British Blockade to France, and

his being enlisted in some type of German Government, and the Intelligence School, and his return to the United States on a German submarine.

Q. Now, do you recall any further conversation?

A. Yes. Hans Haupt further said that on Sunday night, June 21, the Wergins and the Haupts went over to the Froehling home again, they only stayed a short while, but during the stay in the Froehling home, Herbie Haupt again discussed his activities, that is, his trip to Japan and Germany, the Intelligence School, then back to the United States on a German submarine. However, they became a little afraid that the visitors, the people in
1638 the building, might overhear them, and that the Wergins and the Haupts left the Froehling home and went over to the Haupt home, and again Herbie Haupt discussed his story and his Intelligence School attendance with them, and Hans Haupt said that it was for this reason, that is because the Wergins—Otto Wergin and his wife were so insistent on Herbie going forward with these plans, he wanted to testify against him in court.

Q. Was there anything further stated on that conversation, as you recall?

A. Yes. Hans Haupt related that on Saturday night, June 27th, in his home on Fremont Street, that the Froehlings and Wergins and themselves, that is, Erna and Hans Haupt, were in their residence, and because Herbie had not shown up all day, they became rather fearful something had happened to him, and at that time they all discussed on that date in the event something had happened, they decided if anything had happened to Herbie, or if they were questioned, they would all tell the same story, that they knew nothing about his activities, except the fact he had gone to Mexico.

Q. Now, have you related the substance of all of the conversations that took place that day?

1639 A. Yes.

Mr. FINN. You may cross-examine.

The COURT. Now, Mr. Warnholtz, you may read the cross-examination.

Cross-examination by Mr. WARNHOLTZ:

Q. You say, Mr. Hirsch, that this conversation took place at the beginning of the——

Mr. FINN. Excuse me just a minute.

Q. Do you see Hans Haupt in the courtroom here?

A. Yes.

Q. Will you point him out, please?

A. There he is over there.

Mr. FINN. Indicating the defendant Hans Max Haupt.

By Mr. WARNHOLTZ.

Q. You said this took place at about a quarter to twelve, August 5, 1942?

A. Approximately a quarter of twelve; that is right.

Q. Do you know whether or not Hans Haupt had been already before the United States Commissioner Walker at that time?

A. It was my understanding he had been arr*ai*n*g*ed July 21st, 1942.

Q. And was he arraigned again on that day, do you know, on August 5th?

1640 A. I understood he was to be arraigned at 2 o'clock on that afternoon.

Q. At 2:00 o'clock in the afternoon?

A. That is right.

Q. Do you know whether or not he had retained counsel by the time you talked to him?

A. That was not my business, Mr. Warnholtz.

Q. I am asking you, did you ask him if he retained counsel?

A. My recollection is that Hans Haupt said he did not want counsel, because he wanted to testify.

Q. Are you a lawyer, Mr. Hirsch; had you ever studied law?

A. Yes.

Q. The other gentleman who was present with you, what is his name?

A. Robe.

Q. Has he ever studied law?

A. You will have to ask him.

Q. You do not know?

A. No.

Q. When you spoke about Hans relating this, did he volunteer all of that, or did you ask him?

A. When he first started off, he volunteered.

Q. And later on, he didn't relate it, but answered your questions; right?

1641 A. That is right.

Q. Did you ask him?

A. I asked him questions.

Q. Did you have any stenographer present?

A. No.

Q. You took down this conversation.

A. No; I took my own notes.

Q. Mr. Robe also took notes?

A. That I can't tell you. I took notes for myself.

Q. Who gave you the message at the Bankers Building, the Headquarters; for you to go to the Marshal's office?

A. A. H. Johnson.

Q. That was the Special Agent in charge; is that right?
A. At that time that is correct.
Q. You returned from Washington July 22, 1942?
A. That is right.
Q. By that time had the military trial been had already in Washington?
A. It was in progress and almost over.
Q. When you talked to Hans Haupt, did you at that time believe you were talking to a sane or insane person?
A. You want my opinion?
A. Yes.
A. I would say that Hans Haupt was upset.
1642 Q. Had you at that time heard he tried to commit suicide prior to that date?
A. No; I had just returned from Washington.
Q. Mr. Hirsh, when you arrested Herbert Haupt on the morning of June 27th, was he alone in his car?
A. Yes, he was.
Q. You had also followed him the day preceding, had you not, on Friday, June 26th?
A. I personally didn't.
Mr. WARNHOLTZ. Thank you kindly.
Mr. FINN. Pardon me, one more question.
Mr. WOLL. Now I will read the redirect examination.

Redirect examination by Mr. FINN:

Q. Did you make a memorandum immediately after the conversation, of the conversation that took place?
A. With Hans Haupt?
Q. Yes.
A. At the time I was talking to him I took notes.
1643 Mr. WOLL. Shall I proceed with the direct examination of Mr. Robe?
The COURT. Yes; if you please.

PENNEL V. ROBE, called as a witness on behalf of the Government, after having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. FINN:

Q. Will you state your name, please?
A. Pennel V. Robe.
Q. What is your occupation, Mr. Robe?
A. I am a Special Agent of the Federal Bureau of Investigation.
Q. How long have you been a Special Agent of the Federal Bureau of Investigation?

A. Since September 1940.

Q. Calling your attention to August of 1942, were you assigned to the Chicago office at that time?

A. Yes, sir; I was.

Q. And in the course of your duties, were you assigned to a portion of the investigation in the Haupt case?

A. Yes, sir; I was.

1644 Q. Now calling your attention specifically to the morning of August 5, 1942, did you go anywhere with Agent Hirsh at that time?

A. Yes, sir; I did.

Q. Where did you go?

A. I went to the office of the United States Marshal, in Chicago.

Q. Who gave you orders to go with Mr. Hirsh?

A. The Special Agent in charge of the Federal Bureau of Investigation.

Q. What was his name?

A. A. H. Johnson.

Q. Now, will you tell us where you went when you first got there?

A. We went immediately to the office of Mr. McDonald the United States Marshal.

Q. And thereafter, did you interview, or were you present at an interview with Mr. Hans Max Haupt at the time in this case?

A. Yes, sir; I was.

Q. Can you point out Mr. Haupt in the courtroom?

A. Yes, sir. He is the gentleman there at the end, in the dark suit.

Mr. FINN. Indicating the defendant Hans Max Haupt.

Q. Now, where did this interview take place?

1645 A. In the private room of the United States Marshal's office.

Q. And who was present at the time?

A. Former Special Agent, Earl Hirsh.

Q. And who else?

A. And myself and Mr. Haupt.

A. All right. Will you tell us just what was said by the various parties on that occasion?

Mr. BERTRAM. If the Court please, I want to make the same objection on the same grounds as made to the previous testimony of the Witness Hirsh.

The COURT. Overruled.

By Mr. FINN:

Q. Will you tell us what was said on that occasion, Mr. Robe?

A. Mr. Haupt said he wished to talk about Mr. and Mrs. Wer-

gin, that they were just as involved in this case as he was. He stated that on June 20, 1942, Mr. Haupt, Herbert Haupt, and Erna Haupt visited at the Wergin home on South Wood Street. At that time Herbert Haupt went over the entire story concerning his trip to Japan, then to Germany. He also told of his return to this country by submarine. Mr. Haupt said that Herbert Haupt left the impression that he had attended an Intelligence School in Germany. Mr. Wergin then replied——

1646 Q. Are you saying what Mr. Haupt told you?

A. Mr. Haupt told us. Mr. Haupt then said Wergin told Herbert that he had served in a similar capacity in the First World War, so that he was no dummy, and that if Herbert needed help, he should call on him. Mr. Haupt said that Herbert also mentioned having a large sum of money, the amount was not specified.

Herbert Haupt said that his duties in this country was that of a contact man. Mr. Haupt then said that he blamed Mr. and Mrs. Wergin for the predicament that he was in, and he blamed this on the fact of the influence that Mr. Wergin exerted over Herbert at that meeting on Saturday, June 20th.

He said that Herbert also related the same story in the Froehling home on June 19th.

Q. What did he say with reference to that meeting?

A. He said that Herbert told a complete story of his trip to Germany and return by submarine at the Froehling home at dinner time, and that Mr. and Mrs. Froehling also knew of Herbert's trip.

Q. Now, was there anything further said, anything else said on that occasion?

A. Mr. Haupt said that one June 27th, Mr. and Mrs. Wergin were again in the Haupt home, at 2234 North Fremont
1647 Street, and at that time Mr. and Mrs. Froehling, Mr. and Mrs. Haupt, Mr. and Mrs. Wergin all decided if anybody made any inquiry as to why Herbert was in this country, that their answer, all their answers would be, that they did not know.

Q. Anything further that you recollect?

A. Not that I can recall.

Mr. FINN. You may cross-examine.

Mr. BERTRAM. I wish to make a motion to exclude all the testimony of this witness on the grounds heretofore stated, your Honor.

The COURT. Denied. Now, Mr. Warnholtz, please read the cross-examination.

Cross-examination by Mr. WARNHOLTZ:

Q. Mr. Robe, have you ever studied law?

A. Yes, sir.

Q. Are you admitted to the Bar in any state?
A. In this state?
Q. Any state?
A. Yes, sir.
Q. Before you went over to the marshal's office with whom did you talk in your office, in the FBI headquarters; who told you to go there?
1648 A. I talked with Special Agent Hirsch.
Q. What did he tell you?
A. He told me that I was to accompany him to the United States Marshal's office.
Q. When you talked to Hans Haupt in the marshal's office, did you suggest to Mr. Haupt he should consult an attorney of his own before he talked?
A. No, sir. He asked us——
Q. I am asking you did you suggest that; yes or no?
A. No, sir.
Q. He did not have an attorney with him at the time, did he?
A. No, sir.
Q. Do you know whether or not Mr. Hirsch ever studied law?
A. No, sir.
Q. Do you know whether or not Hans Haupt had an attorney up to that time?
A. No, sir; I do not.
Q. Mr. Robe, you stated that Hans told you at that time in the marshal's office that he wished to talk to you; then he started off talking. Is that right?
A. When we first went into the room we asked him what he wished to talk about.
Q. Then he started to tell you a story?
1649 A. Yes, sir.
Q. Did you ask him from date to date? Did you suggest dates to him. Did he tell you the story?
A. He told us the story.
Q. He gave you dates as you gave them just now?
A. Yes, sir.
Q. It was a story that he told and it was not a matter of him replying to your questions, was it? Was it one of the two?
A. He was asked questions; certainly.
Q. So you did ask him questions?
A. Mr. Hirsch asked him questions; yes.
Q. You did not?
A. No.

Q. Concerning that meeting at the Haupt home on Sunday—on Saturday night, June 27, did Mr. Haupt tell you that evening that the Wergins, Mr. and Mrs. Froehling and their two children were in the home, celebrating Mrs. Haupt's birthday?

A. No, sir.

Q. Did he tell you why the children were over there?

A. No, sir.

Q. You did not testify concerning any of these facts at the trial that was had in this courthouse about a year and a half ago, did you, Mr. Robe?

1650 a A. No, sir; I did not.

Q. To the best of your knowledge Mr. Hirsch did not either?

A. No, sir.

Mr. WARNHOLTZ. That is all. Thank you.

The COURT. Now, Mr. Woll, you read the redirect examination.

Redirect examination by Mr. FINN:

Q. Were you asked anything about it at that time or not?

A. No, sir.

Mr. FINN. That is all.

MR. WOLL. If your Honor please, at the time Mr. Short's testimony was read I had the direct impression one of the jurors did not hear a particular portion of it and I wonder whether it would be advisable to read that.

The COURT. Well, now, they have heard it twice and I think that is sufficient.

Mr. WOLL. All right.

The COURT. Ladies and gentlemen, pursuant to the
1650 A written request of the jury through your foreman there has been read to you a transcript of the testimony of the witnesses, Short, Hirsch, and Robe. The jury are cautioned to bear in mind that they have now heard the testimony of these three witnesses twice while they have heard the testimony of the other witnesses only once, and that they shall not allow the fact that they have heard the testimony of these three witnesses twice to cause them to give undue importance or weight to it. The jury should, on the other hand, consider the testimony of these three witnesses, and that of each of them, as though they had heard it but once and consider it together with all of the other evidence in the case.

1651 The COURT. You may now retire with the marshal, ladies and gentlemen to consider further of your verdict.

(Thereupon the jury retired to consider further of their verdict.)

1652 In the District Court of the United States for the Northern District of Illinois Eastern Division, at Chicago

UNITED STATES OF AMERICA

vs.

HANS MAX HAUPT

Before Hon. JOHN P. BARNES, Judge and a Jury

Friday, June 9, 1944, 3:39 o'clock p. m.

Parties met pursuant to an adjournment.

Counsel present: Messrs. J. Albert Woll, Earle C. Hurley, Richard G. Finn, William J. Connor, appeared for the United States of America; Messrs. Paul A. F. Warnholtz, Frederick J. Bertram, appeared for the Defendant.

* * * * *

1653 (At 3:30 p. m. June 9, 1944, the following proceedings were had in the courtroom in the presence and hearing of the jury:)

Reading of verdict

The COURT. Is everybody here? Have the jury arrived at a verdict, ladies and gentlemen?

The FOREMAN. We have.

The COURT. Will you hand the verdict to the Marshal. Please, Mr. Marshal, hand the verdict to the Clerk. Mr. Clerk, read the verdict.

The CLERK. United States vs. Hans Max Haupt, No. 44 CR 129:

"We the jury find the Defendant, Hans Max Haupt guilty as charged in the indictment. Signed by Joseph M. Callner and eleven other jurors."

The COURT. Any motions, gentlemen?

Mr. WARNHOLTZ. I move, your Honor, the record may show that the verdict was read at 3:39 p. m., after the jury has been out since 11:20 yesterday morning without sleeping, and I move that the jury be polled.

The COURT. Poll the jury, Mr. Clerk.

(Thereupon the jury were polled as to whether this was or was not their verdict and all the jurors after their names

1654 were called by the Clerk answered, "It was their verdict.")

The COURT. Enter the verdict, Mr. Clerk. I thank you for your attention to this case, ladies and gentlemen. I observed you gave very close attention to the evidence as it was presented

I think you have done your duty well. I discharge you with the thanks of the Court and so far as the Court is authorized, with the thanks of the community for your services during these three weeks. You may now go and get your compensation. Tell them where to go, Mr. Clerk.

The CLERK. Go to Room 679 on this floor.

The FOREMAN. Judge, may I speak to you a minute if it is permissible.

The COURT. Just a minute. You be seated, please. This is signed by all of you?

The FOREMAN. All of us.

The COURT: Mr. Callner, the foreman of the jury has just handed me a communication which reads as follows:

Recommendation of jury

JUNE 9, 1944.

"Your Honor, Judge BARNES:

1655 "Realizing fully that our function terminates with the rendering of our verdict, we, the jury, are moved humbly to beseech your Honor's consideration in dealing mercifully with this defendant.

"In conformity with your Honor's instructions, neither pity nor sympathy has entered into our deliberations. In this plea, we express only what is in our hearts.

"Respectfully,

(Signed by the Twelve Jurors.)

1656 The COURT. Just a minute. Do you desire to make a motion for a new trial, Mr. Warnholtz?

Mr. WARNHOLTZ. Not at this moment: I prefer to give the entire matter thought and such a motion we may have in writing, your Honor.

Mr. HURLEY. I will ask that a rule be fixed on the motions within a certain length of time.

The COURT. I want to dispose of this matter quite promptly. I have some matters that are waiting on me. How soon can you be ready?

Mr. WARNHOLTZ. Well, I have not slept at all last night. I have waited for the jury all night and I am rather tired. I do not know that I can be ready to get around at it tonight. I should be able to present the motion the day after tomorrow.

Mr. BERTRAM. May we have five days, your Honor? We have been under a terrible strain of work and sleeplessness.

The COURT. So have we all.

Mr. BERTRAM. Well, I am asking that we have five days.

The COURT. This is the 9th.

Mr. FINN. This is the 9th: yes, your Honor.

The COURT. Well, file such motions as you may desire to
1657 file before four o'clock P. M. on Tuesday the 13th and I will hear you at ten o'clock on Wednesday the 14th.

The COURT. You may be discharged, ladies and gentlemen.

(Which was all the evidence offered, and other proceedings had, including the opening statements of counsel, the closing arguments of counsel, the instructions to the jury and all other proceedings in the above-entitled cause to date.)

* * * * *

1658 In the District Court of the United States for the Northern District of Illinois Eastern Division, at Chicago

UNITED STATES OF AMERICA

vs.

HANS MAX HAUPT

Before Hon. JOHN P. BARNES, Judge and a Jury

Wednesday June 14, 1944, 10:00 o'clock A. M.

Parties met pursuant to an adjournment.

Counsel present: Messrs. J. Albert Woll, Earle C. Hurley, Richard G. Finn, Paul A. F. Warnholtz, Frederick J. Bertram.

* * * * *

1659 ARGUMENT BY MR. WARNHOLTZ ON MOTION FOR A NEW TRIAL

The COURT. How much time will you gentlemen require?

Mr. WARNHOLTZ. I would judge, if the Court please, we will take about thirty minutes. There is also a motion in arrest of judgment. I may state at this time, I do not want to offer any argument as to those points. They have all been covered by the argument in respect to the demurrer.

The COURT. Very well. I will finish my motions of course and then take this matter up.

(Thereupon a recess was had, for the Court to dispose of his regular call, and thereupon the following proceedings were had:)

The COURT. You may proceed.

Mr. WARNHOLTZ. May it please the Court: I have in this case presented a motion in arrest of judgment and do not desire to offer argument on it at this time, and will ask that the Court rule on that motion without further argument.

The COURT. Very well. I will rule at the conclusion of the argument.

1660 Mr. WARNHOLTZ. Now, with respect to the motion for a new trial, I have also filed a written motion at this time. I desire to present argument, only, as to the few of what I see questions of law on the vital points.

Particularly do I wish to go into the matter of intent which must be proven beyond a reasonable doubt before the defendant can be found guilty of the crime of treason.

I shall first reread in connection with this matter certain instructions, which were given to the jury in typewritten form, after they had first been read to the jury by your Honor. I should like to read instruction number 37, because most of my argument will be based on that particular instruction:

"If you are not satisfied beyond a reasonable doubt that the defendant's intention and purpose in acting as he did was evil, that is, if you are not satisfied beyond a reasonable doubt that the defendant intended to aid and comfort the enemies of the United States, the defendant must be found not guilty.

1661 "If you believe the defendant's intention in doing what he did during the period from June 17, 1942, to and including July 17, 1942, was not in any way to injure the United States but merely to assist his son, Herbert Haupt, as an individual, as distinguished from assisting him in his purposes, if such existed, of aiding the German Reich, or of injuring the United States, the defendant must be found not guilty.

The defendant takes no issue with this instruction, assuming, however, that it is intended to mean to apply to a case where aid and comfort is given by a father to his son in the personal needs of the son, as an individual, although the father knows that the son is a foreign agent of a country with which we are at war. It seems that this presumption on our part must necessarily have been included or intended, for this instruction, because if it were otherwise there would be no reason for such an instruction; in fact, if otherwise, there would be no reason to put the man on trial for a crime of treason because neither a father nor a stranger can be guilty of the crime of treason by dealing with a foreign

1662 agent or the agent of a foreign power with which we are at war, if such person, namely, he father or such stranger does not know that he is dealing with such particular agent.

It seems that under this instruction, number 37, there remains only one question to be answered, and that is whether or not the defendant, Hans Max Haupt, by the overt acts which were submitted to the jury intended to aid his son as an individual or in his capacity as an agent of the enemies and thereby the German Reich.

In order to ascertain this intention, we have only two sources from which we can get our information, and that is the testimony of witnesses and the nature of the particular acts which were performed by the defendant as charged in the indictment. Concerning the nature of the overt acts submitted in this case to the jury, as a source of ascertaining the intent with which the same were forthcoming, we contend that instructions 53, 54 and 63, which were suggested by the government, and which, with the exception of a few words were given verbatim as so suggested in the charge to the jury, must have had a confusing and misleading in-
1663 ference upon the jury; in fact, to such an extent that the defendant's right to a fair trial was taken away by these instructions from him thereby.

Now let us first examine all of the 12 overt acts given to the jury as to their nature and the natural and probable consequences of such acts. These twelve overt acts state, in fact, or contain in fact but three different statements of facts. Namely, first, that the defendant harbored and sheltered his son, Herbert Haupt.

The second one would be that the defendant accompanied his son Herbert Haupt when Herbert Haupt went out to seek reemployment with a company with which he had worked for approximately two years.

The third one would be that the defendant bought his son an automobile.

Now, in order to find to what extent these situations or statements of fact may have a bearing on the matter of intent we will have to analyze the natural and probable consequences of such acts. We say that these natural and probable consequences would be the following:

"The harboring and sheltering of the son, would give the
1664 son a place in his father's house where to live."

That is the natural and probable consequences of that act, and, concerning "Accompanying his son to the home of the foreman and superintendent of the particular company where Herbert Haupt had worked before he left the United States" the consequences of that act would be none, unless it were shown that the father aided or did procure the reemployment, and even then the natural and probable consequences of such act would merely effect to keep the boy off the street or permit him to work as all other young men do or ought to do.

Now, as to the third one "the buying of an automobile," I would say the natural and probable consequences of that act are to allow Herbert Haupt to enjoy the pleasures of a car, the conveniences of a car for such purposes as young men usually use cars nowadays. With this in view, I would like to point out the vices of instructions

53, 54, and 63 and also show incidentally how thereby instruction number 37 which I have read in the beginning and which
1665 involves the relationship of father and son is completely cancelled out; as to instruction number 53 which reads:

"As I have heretofore stated to you the treasonable intent of the defendant is an essential element of the crime charged herein, and before you can find the defendant guilty, you must find beyond a reasonable doubt; not only that such defendant adhered to the enemies of the United States, giving them aid and comfort, but also at the time of such alleged adherence and giving of aid and comfort, the defendant intended to do so.

"This does not mean, however, that you must find that the defendant went through any specific mental process as the result of which he was conscious of the specific thought, 'I am going to commit treason.' This is not necessary, for every man in law is presumed to intend the natural and probably consequences of his acts, if they are deliberately done. Anyone who is conscious of his acts, and his surroundings and knowingly commits certain acts, must be regarded as intending the natural and probable consequences of those acts.

1666 These observations are, of coarse, not intended to cast any inferences one way or the other on the defendant's intent."

We say that this instruction is erroneous. In order to commit treason a man must have the specific thought or intent to commit treason or to commit that evil which we call treason. Proof of that thought or intent may be brought by showing the commission of acts; that is true, but such acts must manifest the treasonable purpose, or must have been committed pursant to prior arrangements, plan, or a conspiracy to commit treason, which plan of conspiracy must first be proven.

Now, considering the facts in this case, if your Honor please, we maintain that the overt acts are in themselves innocent acts of every day occurrences, and not manifesting treasonable purposes, and for that reason we do maintain that there is no basis whatsoever for instruction number 53 which I have just read. It never should have been included in the charge to the jury:

Now, instruction number 54 goes several steps further: I shall read it:

1667 "In this regard, motive should not be confused with intent. If a person knowingly and deliberately adheres to and gives aid and comfort to one whom he knows to be an enemy, then he must in law, be taken to intend the natural and probable consequences of his own deliberate act, and the fact that his motive may not have been to aid the enemy is no defense.

"In other words, one cannot do an act which he knows will give aid and comfort to a person he knows to be an enemy of the United States and then seek to disclaim criminal and treasonable intent by saying that his motive was not to aid the enemy. So, if you believe from the evidence, beyond a reasonable doubt that the defendant as alleged in the indictment performed one or more of the overt acts submitted to your consideration and that that act or those acts were of such a nature that the natural and probable consequences of their performance was to give aid and comfort to the enemies and if you further believe that the defendant performed such act or acts deliberately with knowledge that Herbert Haupt was an enemy agent, if you find that he was, then you
may find that the defendant had the criminal and treason-
1668 able intent, since he intended to do the acts forbidden by
the law. Under such circumstances, the fact that you may also believe that the motive in so doing, if you find that he did, was, for example, to help his son, would not in such event change the fact that he had a criminal and treasonable intent."

It should be observed that in this instruction number 54, the instruction no further speaks about the enemies of the United States, namely the German Reich, as was properly done in instruction number 37, and partly also in instruction number 53. This instruction number 54 merely speaks about "an enemy" and "the enemy." A very careful reading and scrutiny of this instruction will show that this is an additional factor which may have tended to confuse and mislead the jury.

Briefly stating the instruction says, as we see it, that when a father gives aid and comfort to his son, whom he knows to be an agent of some country or an enemy of the United States, then the father must necessarily be acting in the matter of giving aid
and comfort to his son with criminal and traitorous intent,
1669 even though it was not his intention "to adhere to the enemies of the United States by giving aid and comfort." We place this construction upon this particular charge, inasmuch as the instruction has to be read in connection with the overt acts submitted to the jury in this case and all of the overt acts submitted to the jury were innocent and lawful per se.

It is our contention that this instruction number 54, particularly if read in connection with instruction number 53 is utterly inconsistent with instruction number 37 and with the law on the subject of treason.

Now, instruction number 63 is just a further step on eliminating instruction number 37. In connection with these instructions we must remember that the jury took these instructions with them in typewritten form to be used by them in their deliberations and we contend that by reason of the inconsistency of the instructions,

as far as we have pointed them out, the jury must have become utterly confused and misled as to the law of intent, and possibly the most important part as to the crime of treason, and that
1670 by reason of said fact the defendant is entitled to a new trial.

We also maintain that these instructions completely deprive the defendant of his defense of no treasonable intent.

I shall now touch on another matter, the so-called background testimony which was introduced by the government for the purpose of proving traitorous intent on the part of the defendant with reference to the overt acts alleged in the indictment and which, according to the indictment were committed between June 17, 1942, and July 17, 1942. In connection herewith, the testimony of three witnesses was admitted concerning remarks made by Herbert Haupt—no, made by the defendant Hans Haupt somewhere between the period of time of from 1935 to 1940. We claim that such testimony cannot possibly prove the treasonable intent of Hans Haupt. The remarks which Hans Haupt is supposed to have made according to that testimony were of such nature that they would necessary intend to incite prejudice in the minds of the jurors against this defendant on this trial. The making of the remarks at the time when they were made did not con-
1671 stitute unlawful acts and there is not a single authority on the law of treason on which is based the contention that intent to commit treason may be proven by statements made during the time of peace, in fact, as long as six and a half years prior and not less than one year before our country was at war.

The Circuit Court of Appeals stated with reference to this evidence in the case of the United States vs. Hans Max Haupt, et al., as follows:

"It covered an extremely wide field. In fact as to some of the defendants it reads as though they were on trial for the sins of a lifetime." It seems that the authorities hold the intent in the matter of treason must be a specific intent and not a general evil disposition. Indeed we might state that it would be very difficult to understand how a lawful act committed in the year 1935, and during peacetime, could give the required element of traitorous intent to commit treason in 1942. We deem that the admission of this so-called background evidence was highly prejudicial to the rights of the defendant to a fair trial.

1672 Now, what other evidence did we have with reference to the matter of intent? I recall nothing. If I am mistaken about it, counsel for the government will so point out. I recall nothing except the testimony of one single witness and that witness was Hamby and he testified that the defendant told him that he intended to help Herbert Haupt in the purposes for which he

was sent here. But who is Hamby? A man who is now serving a life term in the penitentiary for robbery with a gun. A man who has been thrice convicted of a felony. A man who testified in this case about two months ago to the effect that at about the very time when Hans Haupt is supposed to have made this statement that he wanted to aid his son, also stated at that time the defendant was acting queerly. This man Hamby thereupon, according to his own testimony, offered aid and instructed the defendant in the matter of shamming insanity for the purpose of deceiving the prosecution.

The words of such a man is the only direct testimony which we have with reference to the intent of Hans Max Haupt.

1673 To sum up in the matter of proof of intent, we have the statement of this man Hamby, now serving a life term. Then we have the background evidence, in addition to that we have the nature of the overt acts which were of a lawful and innocent nature. That is all, but the law requires proof beyond a reasonable doubt also as to the element of intent. We claim that such proof has not been produced and that the defendant is entitled to a new trial by reason thereof.

A further point—I also took exception to the fact that the testimony of two government witnesses and one defense witness was reread to the jury, upon the request of their foreman, after the jury had been out for a period of twenty-two hours without sleep and without having any sleeping or resting facilities.

Then, too, is to be considered that the jury consisted of six men and six women who were confined during all that time, without sleep, in a single room. We believe that under the circumstances the verdict of the jury, which was brought in after about twenty-

1674 eight hours, without sleep, by the jury, was not and could not have been a verdict fairly arrived at and that the jury should have been discharged before arriving at a verdict, after such a long period of time.

In conclusion, I wish to mention that the verdict must have been undoubtedly also the result of passion, prejudice and war hysteria, induced by the tactics of the government's attorneys. The closing argument in this case by the United States Attorney was made the day after what we have for many months termed, "The Invasion Day," a day on which millions of our people had been asked to kneel down in prayer for our boys now facing death on many battlefields in widely scattered parts of the world. The name of that day, sacred to us, because on that day our sons offered their lives for America, was used inadvertently or otherwise, I do not know, in connection with winning a lawsuit in this case, and then let us consider the argument by Mr. Finn, the Assistant District Attorney. Here are his words:

"Ladies and Gentlemen:

"I don't have to remind you that we are at war. Your obligation is clear, and the young men of our nation are spread
1675 throughout the world and the battlefields of the world."

And then the objection stopped him, but the appeal had been made.

I do not know what this case, what justice and fair deliberation of the merits of this case has to do with the fact that, at the present time we are at war. It was an appeal to hatred and to passion instead of an appeal to justice as it behooves the United States Attorney, according to the decision of the United States Supreme Court, to make. In fact, we know it is his duty to make such an appeal to justice and not to passion.

I want to close my argument by asking that the defendant be given a new trial. I thank your Honor.

Mr. FINN. If the Court please——

The COURT. I don't think I care to hear from the government. The motion in arrest of judgment will be overruled and denied.

Mr. WARNHOLTZ. May I respectfully ask the Court that an exception be noted?

The COURT. Yes. Motion for a new trial overruled and denied.

1676 Mr. WARNHOLTZ. May I ask respectfully of the Court that an exception be noted?

The COURT. Yes. Anything further to be said on behalf of the defendant before Court imposes sentence?

Mr. WARNHOLTZ. No; we have nothing.

The COURT. I think I shall impose sentence at two o'clock today. The Marshal will have the defendant here at that time, two o'clock today.

(Whereupon a recess was had to the afternoon of Wednesday, June 14, 1944, at the hour of two o'clock P. M.)

* * * * *

1677 In the District Court of the United States for the Northern District of Illinois, Eastern Division, at Chicago

UNITED STATES OF AMERICA

vs.

HANS MAX HAUPT

Before Hon. JOHN P. BARNES, Judge

Wednesday, June 14, 1944, 2:00 o'clock P. M.

Parties met pursuant to recess.

Counsel present: Messrs. J. Albert Woll, Earle C. Hurley, Richard G. Finn, Paul A. F. Warnholtz, Frederick J. Bertram.

* * * * *

1678 The CLERK. Case number 44-CR-129, United States of America vs. Hans Max Haupt. Imposition of sentence.

The COURT. Anything further to be said on behalf of the defendant at this time?

Mr. WARNHOLTZ. Nothing, your Honor.

Sentence

The COURT. The defendant may stand up. Sentence will be life imprisonment. I am filing a memorandum which I think sufficiently explains that sentence.

1679 (Memorandum omitted. Printed side page. 112 ante.)

1684 Mr. WARNHOLTZ. May I state at this time, your Honor, that the defendant does not desire to enter on serving the sentence pending the time which is allowed for taking an appeal and during the period, if one is taken.

The COURT. He will be remanded to the custody of the Marshal.

(Which was all the evidence offered, or other proceedings had including opening statements of counsel, closing arguments, and arguments on motions for a new trial to date.)

* * * * *

1685 Presented in open court this 19th day of September A. D. 1944.

JOHN P. BARNES, [SEAL]
United States District Judge.

(Reporter's certificate to foregoing transcript omitted in printing.)

1686 In the District Court of the United States of America for the Northern District of Illinois, Eastern Division

No. 44 C. R. 129

UNITED STATES OF AMERICA

vs.

HANS MAX HAUPT

Bill of exceptions (continued) Volume Four

Be it remembered that the above-entitled cause came on before this Court, the Honorable Judge John P. Barnes, presiding, for the determination of the various questions presented to the Court by demurrer, plea, motions, objections, etc., and for trial of the issues, and the following additional proceedings were had in said cause, to wit:

Appearances: J. Albert Woll, Esquire, United States Attorney, for the United States of America. Paul A. F. Warmholtz, Esquire, and Frederick J. Bertram, Esquire, Attorneys for the defendants.

VOLUME FOUR

(NOTE: This volume includes the pleadings, demurrer, written motions, exceptions, etc. in proceedings had both before, after, and during the trial of said cause.)

1687 That on, to wit, the 25th day of February A. D. 1944, there was filed in the said Court a certain indictment in words and figures as follows, to wit:

(Indictment omitted. Printed side page. 3 ante.)

1701 And on, to wit, the 6th day of March A. D. 1944, came the defendant, Hans Max Haupt, by his attorneys, and filed in the Clerk's office of said Court, a certain Demurrer to the aforementioned Indictment, in words and figures as follows, to wit:

1702 (Demurrer to the indictment omitted. Printed side page. 75 ante.)

1704 And on, to wit, the 9th day of March A. D. 1942, came the plaintiff, United States of America, by J. Albert Woll, United States Attorney, and filed in the Clerk's office of said Court, a certain answer to said demurrer to the Indictment in words and figures as follows, to wit:

1705 Answer to demurer to the indictment omitted. Printed side page. 12 ante.

1707–1713 *Demurrer overruled*

Thereupon, to wit, the 10th day of March A. D. 1944, the Court overruled the said demurrer of the defendant, Hans Max Haupt, to the indictment herein, to which said ruling of the Court in overruling the demurrer of said defendant,

1714 the defendant, by his counsel, duly excepted; and the defendant was thereupon arraigned, a plea of "not guilty" entered and said cause was set for trial for May 15, 1944.

1715 Thereupon, to wit, the 24th day of April A. D. 1944, on motion of the defendant, it was ordered that defendant's plea of "not guilty" be withdrawn and that defendant have leave to file instanter his motion to quash and dismiss the indictment herein.

1716 And, on, to wit, the 24th day of April A. D. 1944, came the defendant, Hans Max Haupt, by his attorney, and filed the said motion to quash and dismiss the indictment herein, in words and figures as follows, to wit:

1717 Motion to quash and dismiss indictment omitted. Printed side page. 41 ante.)

1720 *Denial of motion to quash and dismiss*

Thereupon, on, to wit, the 24th day of April A. D. 1944, the Court denied the said motion to quash and dismiss the Indictment herein, to which said ruling of the Court in denying said motion to quash and dismiss the Indictment herein, the defendant, by his counsel, duly excepted.

1721 And on, to wit, the 24th day of April A. D. 1944, came the defendant, Hans Max Haupt, by his attorney, and filed a certain Motion for Bill of Particulars, in words and figures as follows, to wit:

1722 (Motion for bill of particulars omitted. Printed side page. 48 ante.)

1725 *Motion for bill of particulars overruled*

Thereupon, on, to wit, the 24th day of April A. D. 1944, the Court overruled and denied the defendant's said Motion for a Bill of Particulars, to which said ruling of the Court in overruling and denying the defendant's Motion for a Bill of Particulars, the defendant, by his counsel, duly excepted:

1726 *Arraignment and plea*

Thereupon, on, to wit, the 24th day of April A. D. 1944, the defendant was arraigned and entered a plea of "not guilty."

1727 Thereupon, on, to wit, the 22nd day of May A. D. 1944, said cause was called for trial and the examination of jurors on their voire dire was commenced; and, thereafter, on the 24th day of May A. D. 1944, the examination of jurors on their voire dire was concluded and the jury was sworn to try the issues in said cause; and, thereupon, two alternate jurors, by order of Court, were sworn as alternate jurors in said cause; and, thereupon, the opening statements of counsel for the prosecution and for the defense were heard and concluded and it was ordered that the jury be allowed to separate until May 25, 1944, at 10:00 a. m.

And, thereupon, on, to wit, the 25th day of May A. D. 1944, and from day to day thereafter, evidence was introduced on behalf of the Government and proceedings were had as set forth in the transcript thereof, all of which are contained in Volumes I and II, which is made a part of this Bill of Exceptions; and by order of Court, the jury was allowed to separate at the time of adjournment on each day until the convening of Court on the day or date following, at which time the trial of said cause was to be resumed.

Thereupon, on, to wit, the 2nd day of June A. D. 1944, the Government rested its case.

1728 Thereupon, on the trial of said cause, to wit, on the 2nd day of June A. D. 1944, at the conclusion of the Govern-

ment's evidence in the case, and before any further proceedings were had in said cause, the defendant, Hans Max Haupt, by his attorney, made and filed the following motions in writing, for a directed verdict of "not guilty" upon the charges contained in the indictment, and upon each of the overt acts in the said indictment, in words and figures as follows, to wit:

1729 (Motions on behalf of Hans Max. Haupt, defendant omitted. Printed side page. 55 ante.)

1731 *Motion for directed verdict overruled*

But the Court overruled said Motions of the defendant, Hans Max Haupt, and refused to direct the jury to find said defendant "not guilty" under said indictment and refused to direct the jury to find the defendant "not guilty" upon said overt acts one (1) to twenty nine (29) inclusive, or upon any of said overt acts contained in said indictment, to which said rulings of the Court and refusal to so instruct and direct the jury, the defendant, by his counsel, then and there duly excepted.

And, thereupon, the defendant, by his counsel, made and filed the following Motion in writing, to strike and exclude from the evidence, certain testimony of witnesses for the prosecution relating to matters involving activities of Herbert Haupt, which occurred prior to the middle of June 1941, and for the Court to instruct the jury not to consider such testimony, which Motion was in words and figures as follows, to wit:

1732 In United States District Court

[Title omitted.]

Motion

And now comes the defendant, Hans Max Haupt, by Paul A. F. Warnholtz, his attorney, and moves the Court to strike and exclude from the evidence in the case all testimony of witnesses for the prosecution relating to matters involving activities of Herbert Haupt, which occurred prior to the middle of June 1941, upon the grounds that the same is irrelevant, incompetent, and immaterial, and relates to matters not involving the charges against the defendant contained in the indictment, tending to the great prejudice of the rights and interests of the defendant and deprives him of the right to a fair and impartial trial herein;

And the defendant further moves the Court to instruct the jury that they are not to consider such testimony relating to activities of said Herbert Haupt which occurred prior to the middle of June 1941.

PAUL A. F. WARNHOLTZ,
Attorney for said Defendant.

1733 But the Court overruled said Motion of the defendant, Hans Max Haupt, and refused to strike and exclude from the evidence in the case such testimony, and refused to instruct the jury not to consider such testimony; to which said ruling and refusal of the Court to give said instructions to the jury, the defendant, by his counsel, then and there duly excepted.

That, by leave of Court, said Motion was renewed at the close of all of the evidence in the case, to wit, on the 5th day of June A. D. 1944, and the Court thereupon again overruled and denied said Motion; to which ruling and denial of said Motion by the Court, the defendant, by his counsel, then and there duly excepted.

And, at the conclusion of the Government's evidence in the case, on, to wit, the 2nd day of June A. D. 1944, the defendant, by his counsel, made and filed the following further Motion in writing to strike and exclude from the evidence in the case all testimony of witnesses relating to conversations with Herbert Haupt and alleged statements made by Herbert Haupt outside of the presence of the defendant and for the Court to instruct the jury not to consider such testimony, which said Motion was in words and figures as follows, to wit:

1734 In United States District Court

[Title omitted.]

Motion

And now comes the defendant, Hans Max Haupt, by Paul A. F. Warnholtz, his attorney, and moves the Court to strike and exclude from the evidence in the case all testimony of all witnesses relating to conversations with Herbert Haupt and alleged statements made by Herbert Haupt outside of the presence of the defendant, upon the following grounds:

(a) All such testimony constitutes hearsay evidence which is inadmissible.

(b) Said Herbert Haupt died before the commencement of this trial and his alleged statements are inadmissible as evidence against this defendant who was not present when such alleged statements were made.

(c) All such testimony was incompetent, immaterial and irrelevant to the issues in the case.

And the defendant further moves the Court to instruct the jury that they are not to consider any such testimony relating to such conversations and alleged statements of Herbert Haupt.

PAUL A. F. WARNHOLTZ,
Attorney for said Defendant.

1735 But the Court overruled said motion of the defendant, Hans Max Haupt, and refused to strike and exclude from the evidence in the case any of the said testimony referred to in said motion and refused to instruct the jury not to consider such testimony; to which said ruling and refusal of the Court to give said instructions to the jury, the defendant, by his counsel, then and there duly excepted.

That, by leave of Court, said motion was renewed at the close of all of the evidence in the case, to wit, on the 5th day of June A. D. 1944, and the Court thereupon again overruled and denied said motion; to which ruling and denial of said motion by the Court, the defendant, by his counsel, then and there duly excepted.

And, at the conclusion of the Government's evidence in the case, on, to wit, the 2nd day of June A. D. 1944, the defendant, by his counsel, made and filed the following further motion in writing to strike and exclude from the evidence in the case all testimony of witnesses for the prosecution relating to statements alleged to have been made by the defendant prior to June 17, 1942, and for the Court to instruct the jury not to consider such testimony, which said motion was in words and figures as follows, to wit:

1736 In United States District Court

[Title omitted.]

Motion

And now comes the defendant, Hans Max Haupt, by Paul A. F. Warnholtz, his attorney, and moves the Court to strike and exclude from the evidence in the case, all testimony of witnesses for the prosecution relating to any statements alleged to have been made by the defendant herein prior to June 17th, 1942, upon the grounds that all such testimony is irrelevant, incompetent and immaterial and relates to matters not involving the charges against the defendant contained in the indictment, and tends greatly to the prejudice of the rights and interests of the defendant and deprives him of the right to a fair and impartial trial herein:

And the defendant further moves the Court to instruct the jury that they are not to consider such irrelevant, incompetent and immaterial testimony herein.

PAUL A. F. WARNHOLTZ,
Attorney for the Defendant.

1737 But the Court overruled said motion of the defendant, Hans Max Haupt, to strike and exclude from the evidence the testimony referred to in said motion and refused to instruct the jury not to consider such testimony; to which said ruling of

the Court and refusal to give said instructions, the defendant, by his counsel, then and there duly excepted.

That, by leave of Court, said motion was renewed at the close of all of the evidence in the case, to wit, on the 5th day of June A. D. 1944, and the Court thereupon again overruled and denied said motion; to which ruling of the Court the defendant, by his counsel, then and there duly excepted.

And, at the conclusion of the Government's evidence in the case, on, to wit, the 2nd day of June A. D. 1944, the defendant, by his counsel, made and filed the following further motion in writing to strike and exclude from the evidence in the case all testimony of witnesses for the prosecution relating to statements alleged to have been made by the defendant prior to December 7, 1941, and for the Court to instruct the jury not to consider such testimony, which said motion was in words and figures as follows, to wit:

1738 In United States District Court

[Title omitted.]

Motion

And now comes the defendant, Hans Max Haupt, by Paul A. F. Warnholtz, his attorney, and moves the Court to strike and exclude from the evidence in the case all testimony of witnesses for the prosecution relating to any statements alleged to have been made by the defendant herein prior to December 7th, 1941, upon the grounds that the United States was not then engaged in any war, and that all such testimony is irrelevant, incompetent, and immaterial and relates to matters not involving the charges against the defendant contained in the indictment, and tends greatly to the prejudice of the rights and interests of the defendant and deprives him of the right to a fair and impartial trial herein:

And the defendant further moves the Court to instruct the jury that they are not to consider such irrelevant, incompetent and immaterial testimony herein.

PAUL A. F. WARNHOLTZ,
Attorney for the Defendant.

1739 But the Court overruled said motion of the defendant, Hans Max Haupt, to strike and exclude from the evidence the testimony referred to in said motion and refused to instruct the jury not to consider such testimony; to which said ruling of the Court and refusal to give said instructions, the defendant, by his counsel, then and there duly excepted.

That, by leave of Court, said motion was renewed at the close of all of the evidence in the case, to wit, on the 5th day of June A. D. 1944, and the Court thereupon again overruled and denied saaid motion; to which ruling of the Court the defendnt, by his counsel, then and there duly excepted.

1740 And upon the trial of said case, after the conclusion of the Government's case and during the presentation of the defendant's evidence, on, to wit, the 5th day of June A. D. 1944, the defendant, Hans Max Haupt, by his counsel, for the purpose of impeachment of John Majerczak, a witness for the prosecution, offered as part of the evidence on behalf of the defendant the following transcript of the testimony of said witness, John Majerczak, given by him at the prior insanity hearing of the defendant, Hans Max Haupt, held in this cause before his Honor, Judge John P. Barnes, on, to wit, the 18th day of April A. D. 1944, in words and figures as follows, to wit:

1741 In United States District Court

[Title omitted.]

Testimony of John Majerczak before the Honorable John P. Barnes, and a jury upon hearing of insanity petition in re Hans Max Haupt, on April 18th, 1944

(Transcript page 226 to 236, incl.)

Counsel present: Mr. J. Albert Woll, United States Attorney, and Mr. Richard Finn, Assistant United States Attorney, appeared on behalf of the United States of America: Mr. Paul A. F. Warmholtz, Attorney, appeared on behalf of Hans Max Haupt, defendant.

1742 JOHN MAJERCZAK, called as a witness by the Government, after having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. WOLL:

Q. What is your name?
A. John Majerczak.
Q. Do you go by the name of Norris?
A. Yes, sir; Stanley Norris.
Q. At the present time you are incarcerated in the Illinois State Penitentiary, are you?
A. Yes, sir.
Q. How long have you been there?
A. Eighteen months.

Q. Prior to the present imprisonment, were you ever in state prison before?

A. I spent thirteen months in Statesville for parole violations; the state reformatory.

Q. You say you spent how many months?

A. Thirteen months in Statesville.

Q. For parole violations?

A. Yes, sir; from the reformatory.

Q. The reformatory was what; Pontiac?

A. Yes, sir.

Q. When did you go down to Pontiac?

A. 1930 for that one.

Q. 1930?

A. Yes, sir.

Q. How long did you stay in Pontiac?

A. Until 1934.

Q. At that time you were paroled, were you?

A. Yes, sir.

1743 Q. Then what happened?

A. I was out. Is was arrested for parole violations. I was sent to Statesville for thirteen months.

Q. When were you released from Statesville?

A. I was released from Statesville in 1941; July 3rd.

Q. Were you arrested after that?

A. Yes, sir.

Q. When were you arrested?

A. I was arrested in 1941—no; January 7, 1942.

Q. Are you sure of the date?

A. 1942.

Q. 1942?

A. Yes, sir, that is right.

Q. And as a result of that arrest, were you indicted?

A. Yes, sir; I was indicted.

Q. Were you convicted.

A. I was.

Q. Were you sentenced?

A. I was.

Q. What was the sentence?

A. Natural life.

Q. Is that the sentence you are now serving in the Illinois State penitentiary?

A. Yes, sir.

Q. Now, while you were in the Cook County jail in 1942, did you become acquainted with a man by the name of Hans Haupt?

A. Yes, sir.

Q. Do you recall about when it was you became acquainted with him?

A. The middle of September 1942—I mean July.

Q. July 1942?

A. July 1942.

Q. Where were you at the time?

A. I was on H–4, Cook County jail.

Q. Was H–4 on the same floor.

A. Yes, sir.

1744 Q. At that time did you have any conversation with Hans Haupt, yourself, concerning sanity or insanity?

A. Directly; no, sir.

Q. Did you hear anyone having a conversation with Haupt?

A. Yes, sir.

Q. Did you participate in a conversation with anyone else in which conversation Haupt joined.

A. Yes, sir.

Q. Now, calling you' attention to sometime after you met Haupt, and while you were detained in the Cook County jail, did you and Hamby have a conversation in regard to a man who had been sent to Menard?

A. Yes, sir; I remember that.

Q. Do you know when that conversation was?

A. That conversation was pertaining to putting on an insane act.

Q. About when was that?

A. That was in July.

Q. Did Hans Haupt talk in that conversation?

A. Yes, sir.

Q. What did he say? Give the conversation as you heard it; tell us what you heard Haupt say.

A. Well, Cael Hamby was bawling me out for not telling my attorney, W. W. O'Brien, to enter a plea of insanity on my behalf. I advised my attorney about that and he told me it was foolish, it would be no good in my case; and Hamby, after he met this fellow in the Cook County bullpen, he was telling me about this and bawled me out; I should have done it because this fellow, he had numerous robberies on him and he was indicted like I was and he got natural life but he put on an insane act and he went to

1745 Menard and stayed there between four and five years and he come back to Cook County and by that time the witnesses were not interested in the case and, with the agreement of the State he got two years in the Cook County jail. That was the subject of that conversation.

Q. What did Hans Haupt say, if anything?

A. He discussed it with Hamby, why he would do that.

Q. You mean Haupt asked Hamby why he didn't do it?

A. Hamby advised him, so he was under sentence and why he couldn't do it. He asked Mr. Haupt what he thought of the idea and Mr. Haupt did tell him he liked it, he thought it would go as a last resort he would take it.

Q. While you were in the County jail did you engage in any mental tests games with Mr. Haupt?

A. Yes, sir; to divert the time we played games, a numerous number of games.

Q. How would the matter be worked?

A. Worked; one I remember particular you take nine squares and you take numbers from 1 to 9 and you put them in—one number in each square and when you finish you have to have 15 in each way all totals, horizontally and diagonally, that is, adding up to 15. Then later on we progressed to having 12 squares, using any number at length, your points are all inserted and it may make 20 and then you add it horizontally and diagonally up and down, either way.

Q. Did you have any problems relating to contractual problems, for instance——

A. Yes; one problem I remember distinctly, because in figuring that we lost track of that particular problem. This concerned paving, for instance, there is a lot on the corner, say 40 feet by 66 feet, or such and a man wanted to have a sidewalk built around his property. It would cost, the sidewalk was four feet wide, 1746 for instance, and it cost ten cents per square foot. Well, he always, when I worked mine, rather I multiplied each side by the four feet wide and I multiplied that by ten cents and in that way I would get the answer, but by doing that I had always to lay out fourteen square feet which is the corner adjoining this lot and that problem Haupt worked.

Q. In your opinion, worked correctly?

A. Oh, yes; he did, because most of us we would leave out the corner.

Mr. WOLL. Your witness.

Cross-examination by Mr. WARNHOLTZ:

Q. Mr. Majerczak, when did you first meet Mr. Hamby?

A. I met him here in the State penitentiary at Statesville.

Q. That is at Statesville?

A. Yes, sir.

Q. You were released on July 3, 1941; correct?

A. Yes, sir.

Q. When you came out, where did you see him again?

A. I did not see Hamby until October.

Q. Until October?

A. Same year.

Q. And then the two of you did on or about January 7, 1942, what did you do, hold up somebody?

A. Yes, well, Hamby—I was not with Hamby on January 2nd.

Q. Then when you were arrested, did you commit the crime together?

A. No, sir.

Q. You were not a codefendant with him?

A. No, sir.

Q. You were not convicted with the same crime that he was?

A. I was convicted for a crime with Hamby.

1747 Q. With Hamby?

A. Yes, sir.

Q. You committed the crime together?

A. No, sir.

Q. When did you last talk with Hamby about this case of Mr. Haupt?

A. I should judge about two hours ago.

Q. What did you discuss together?

A. He told me I was nervous; I shouldn't be nervous. I should go up there and tell the truth.

Mr. WARNHOLTZ. Oh, yes; and did he tell you specifically how you should say it, by way of telling the truth?

A. No, sir.

Q. Yet he posted you on something?

A. No, sir.

Q. Did you ask him, try to obtain any information from him as to some facts you might have forgotten?

A. No; I never asked him about any fact.

Q. Today, yesterday, or the day before yesterday?

A. No, sir.

Q. And did you talk with him about these yesterday?

A. Last night he said we probably would take the stand today.

Mr. WARNHOLTZ. Oh, yes.

Q. And then what else did you or he say about the case?

A. He says we probably would take the stand today.

Q. Did he tell your what you should testify to when you would get on the stand?

A. No, sir.

Q. Did you ask him what cell block you were in?

A. What cell block I was in?

Q. What cell, or at the time when Mr. Hamby was in the Cook County jail yesterday?

A. I don't understand the question.

1748 Q. Well, what did you ask him yesterday that he should straighten you out on, the particular cell you were in, while you were in the county jail?

A. I was in number 8.
Q. Number 8?
A. Yes, sir.
Q. He didn't straighten you out on that yesterday?
A. No, sir.
Q. About how long did you talk about the case with him today?
A. I did not talk about the case. He told me I was nervous and I shouldn't be so.
Q. How long did you talk to him about the case yesterday?
A. Just he told me we probably would take the stand and probably would be in Statesville tomorrow.
Q. Just took a few minutes; right?
A. Less than that.
Q. Less than that?
A. Yes, sir.
Q. Did Mr. Hamby often talk about this insanity matter?
A. Yes, sir; he did.
Q. Seemed to be quite an expert on the subject?
A. Well, he did work among insane persons in the Michigan City penitentiary; Michigan City penitentiary.
Q. And he approached this insanity proposition when he first met you in jail?
A. Yes, sir; he advised me to tell my attorney.
Q. Do you know if he advised anybody else?
A. Well, to the best of my knowledge I don't know. He talked about it to numerous people, yes; I don't know whether he advised anyone.
Q. He often talked about feigning insanity?
A. Oh, yes; he talked about insanity.

Mr. WARNHOLTZ. That is all.

1749 Redirect examination by Mr. WOLL:

Q. There were a number of conversations between Hamby and Hans Haupt; you paid no attention to that; is that right?
A. Yes, sir.

Mr. WOLL. I think that is all.

Mr. WARNHOLTZ. One more question, please.

Re-cross-examination by Mr. WARNHOLTZ:

Q. What crime were you convicted of?
A. Robbery.
Q. Robbery?
A. Yes, sir.

Mr. WARNHOLTZ. That is all.

Mr. WOLL. There is one more question, your Honor. Pardon me.

Re-re-direct examination by Mr. WOLL:

Q. Did Mr. Hamby attempt to straighten you out as to the cell in which Hans Haupt was?

A. Yes; he did.

Mr. WOLL. That is all.

Mr. WARNHOLTZ. That was yesterday, was it?

The WITNESS. Yes; that was yesterday.

Mr. WARNHOLTZ. That is all.

1750 But the Court, upon objection being made by the counsel for the Government, refused to admit into evidence the transcript of the testimony of said John Majerczak, which was given by him as a witness at said insanity hearing of the defendant, Hans Max Haupt, in this cause, a copy of which testimony is hereinbefore set forth, and the Court refused to receive any of said transcript so offered by the defendant for the purposes of impeachment; to which ruling and refusal of the Court to receive in evidence such transcript so offered by the defendant, the defendant, by his counsel, then and there duly excepted.

1751 And upon the trial of said case, after the conclusion of the Government's case and during the presentation of the defendant's evidence, on, to wit, the 5th day of June A. D. 1944, the defendant, Hans Max Haupt, by his counsel, offered, as part of the evidence on behalf of the defendant, to introduce in evidence the Statute of the State of Illinois known as Section 4 of Division 2, of the Criminal Code of the State of Illinois, Chapter 38, Illinois State Bar Association Edition, 1943 Edition, Chapter 38, Criminal Code, paragraph 584, at page 1208, which is in words and figures as follows, to wit:

1752 *Offer in evidence*

ILLINOIS REVISED STATUTES, CHAPTER 38—PARAGRAPH 584, 1943 STATE BAR ASSOCIATION EDITION

Every person not standing in the relation of husband or wife, parent or child, brother or sister to the offender, who knows the fact that a crime has been committed, and conceals it from the magistrate, or who harbors, conceals, maintains or assists any principal felon, or any accessory before the fact, knowing him to be such, shall be deemed an accessory after the fact, and shall be punished by imprisonment in the penitentiary for a term of not less than one year and not exceeding two years, and fined not exceeding $500.00.

1753 But the Court, upon objection being made by the counsel for the Government, refused to receive in evidence the said Statute of the State of Illinois, viz. Section 4, Division 2, Criminal

Code of the State of Illinois, Illinois State Bar Association Edition, 1943 Edition, Chapter 38, Criminal Code, paragraph 584, page 1208, so offered on behalf of the defendant, Hans Max Haupt; to which ruling and refusal of the Court to receive in evidence the said Statute so offered by the defendant, the defendant, by his counsel, then and there duly excepted.

1754 And upon the trial of said case, after the conclusion of the Government's case and during the presentation of the defendant's evidence, on, to wit, the 5th day of June A. D. 1944, the defendant, Hans Max Haupt, by his counsel, offered, as part of the evidence on behalf of the defendant, to introduce in evidence a certain letter dated September 12, 1942, addressed to Mr. Hans Haupt and signed by William B. Adams, Chaplain—1st Lt. United States Army, which was marked "Defendant's Exhibit 13" for Identification, which was in words and figures as follows, to wit:

1755 *Defendant's Exhibit 13.*

HEADQUARTERS TRAINING CENTER,
MILITARY DISTRICT OF WASHINGTON,
CAMP LEWIS, CABIN JOHN, MARYLAND,
12 September, 1942.

MR. HANS HAUPT,
2234 Fremont Street, Chicago, Illinois

MY DEAR SIR: I was with your son, Herbert Haupt, as spiritual advisor until the last moment. Through me he sends his love, requests that you not take it hard, and that his last thoughts were of his mother.

If you should desire to see me after the war is over, I might then bring you his words face to face.

Very sincerely yours,

William B. Adams,
WILLIAM B. ADAMS,
Chaplain—1st Lt.,
United States Army.

1756 But the Court, upon objection being made by the counsel for the Government, refused to receive in evidence the said letter dated September 12, 1942, to Hans Haupt from William B. Adams, Chaplain, hereinbefore set forth and marked "Defendant's Exhibit 13" for Identification, so offered on behalf of the defendant as aforesaid; to which ruling and refusal of the Court to receive in evidence the said Defendant's Exhibit 13 for Identification, so offered by the defendant, the defendant, by his counsel, then and there duly excepted.

1757 And, upon the trial of said cause, other evidence was introduced and proceedings were had as shown in the transcript.

of said proceedings which is contained in Volumes I. and II. and III. ante, which are made a part of this Bill of Exceptions.

And, thereupon, to wit, on the 5th day of June A. D. 1944, the evidence on behalf of the defendant was concluded and the defendant rested, and, thereupon, both sides rested.

And, thereupon, at the conclusion of all of the evidence in the case, to wit, on the 5th day of June A. D. 1944, the defendant, Hans Max Haupt, by his attorneys, made and filed the following Motion to find the defendant "not guilty" of the charges contained in the indictment and the further Motions to find the defendant "not guilty" upon each of the overt acts designated and numbered in said indictment from one (1) to twenty-nine (29), both inclusive, in writing, in words and figures as follows, to wit:

1758 (Motions on behalf of Hans Max Haupt, defendant, omitted. Printed side page. 68 ante.)

1759 *Motion for directed verdict overruled*

But the Court overruled said Motions of the defendant, Hans Max Haupt, and refused to direct the jury to find the defendant "not guilty" under said indictment, and refused to direct the jury to find the defendant "not guilty" upon the overt acts designated and numbered in said indictment from one (1) to twenty nine (29), both inclusive, or upon any of the said overt acts, to which said rulings of the Court and refusal to give such instruction and direction to the jury, the defendant, by his counsel, then and there duly excepted.

And, thereupon, the Court refused to give the following instruction to the jury, which was requested by the defendant, to wit: "The Court instructs the jury to find the defendant not guilty." And the Court thereupon marked said instruction denied, to which said ruling and refusal to give said instruction, the defendant, by his counsel, then and there duly excepted.

1761 And, thereupon, the defendant, by his counsel, requested the Court to give to the jury the following instructions, in writing, numbered D-1 to D-30, both inclusive, to wit:

1762 (Defendant's requested instructions omitted. Printed side page. 1338 ante.)

1792 *Ruling on defendant's requested instructions*

The defendant, by his counsel, thereafter withdrew his request to give instruction number D-5.

But the Court refused to give to the jury said instructions numbered D-1 to D-4, both inclusive, and numbered D-6 to D-30, both inclusive, requested by the defendant, and refused to give any of said instructions to the jury as requested by the defendant, with-

the exception of instructions numbered D-14, D-24 and D-26, requested by defendant; to which said rulings and refusal of the Court to give to the jury said instructions, numbered D-1, D-2, D-3, D-4, D-6, D-7, D-8, D-9, D-10, D-11, D-12, D-13, D-15, D-16, D-17, D-18, D-19, D-20, D-21, D-22, D-23, D-25, D-27, D-28, D-29, and D-30, as requested by the defendant, the defendant, by his counsel, then and there duly excepted.

1793 And, thereupon, at the close of all the evidence in the case and at the conclusion of the arguments of counsel for the Government and of counsel for the defense, the Court gave the following instructions and charge to the jury, to wit:

1794 (Charge to the jury by his Honor Judge J. Barnes omitted. Printed side page. 80 ante.)

1818 To the giving of which instructions and charge to the jury by the Court, the defendant, by his counsel, then and there duly excepted.

Motion for withdrawal of paragraphs 53 and 54 of charge

And, thereupon, the jury retired to consider their verdict, and thereafter, on, to wit, the 8th day of June A. D. 1944, after the jury had been deliberating on their verdict for approximately seven hours, without reaching a verdict, the defendant, by his counsel, in the presence of the United States Attorney and his assistants, but not in the presence of the jury, renewed his objections to paragraphs 53 and 54 of the court's charge to the jury and moved the Court, in the alternative, to eliminate and withdraw said instructions contained in paragraphs 53 and 54 of the Court's charge to the jury, or for the Court to modify the said instructions, paragraphs 53 and 54, in accordance with the objections and suggestions of defendant's counsel, and for the Court to advise the jury of such request, withdrawal or modification of said paragraphs 53 and 54 of said charge to the jury, which said paragraphs 53 and 54 of the Court's charge to the jury were and are in words and figures, as follows; to wit:

"53. As I have heretofore stated to you the treasonable intent of the defendant is an essential element of the crime charged herein, and before you can find the defendant guilty you must and beyond a reasonable doubt, not only that such defendant adhered

1819 to the enemies of the United States, giving them aid and comfort, but also that at the time of such alleged adherence and giving of aid and comfort, the defendant intended to do so. This does not mean, however, that you must find that the defendant went through any specific mental process as a result of which he was conscious of the specific thought, "I am going to commit treason." This is not necessary for every man in law is

presumed to intend the natural and probable consequences of his acts if they are deliberately done. Anyone who is conscious of his acts and his surroundings and knowingly commits certain acts must be regarded as intending the natural and probable consequences of those acts. These observations are, of course, not intended to cast any inferences one way or another on the defendant's intent.

54. In this regard, motive should not be confused with intent. If a person knowingly and deliberately adheres to and gives aid and comfort to one whom he knows to be an enemy, then he must, in law, be taken to intend the natural and probable consequences of his own deliberate act, and the fact that his motive may not have been to aid the enemy is no defense. In other words, one cannot do an act which he knows will give aid and comfort to a person he knows to be an enemy of the United States and then seek to disclaim criminal and treasonable intent by saying that his motive was not to aid the enemy. So if you believe from the evidence beyond a reasonable doubt that the defendant as alleged in the indictment, performed one or more of the overt acts submitted to your consideration and that that act or those acts were of such a nature that the natural and probable consequence of their performance was to give aid and comfort to the enemy, and if you further believe that the defendant performed such act
1820 or acts deliberately with knowledge that Herbert Haupt was an enemy agent, if you find that he was, then you may find that the defendant had the criminal and treasonable intent, since he intended to do the act forbidden by the law. Under such circumstances, the fact that you may also believe that his motive in so doing, if you find that he did, was for example, to help his son, would not in such event, change the fact that he had a criminal and treasonable intent.

But the Court overruled and denied said motions of the defendant, Hans Max Haupt, by his counsel, and refused either to withdraw or modify the said instructions contained in paragraphs 53 and 54 of the Court's charge to the jury, aforementioned, and refused to give to the jury on behalf of the defendant, any other or further instructions, to which said rulings of the Court and refusal to give the jury further instructions, as requested, said defendant, by his counsel, then and there duly excepted.

1821 Thereafter, on, to wit, the 9th day of June A. D. 1944, at about the hour of 10 o'clock a. m., on the said day, and while the jury in said cause was still deliberating upon their verdict, counsel for the Government and counsel for the defense, appeared before the Court, in the Court's chambers, pursuant to the Court's request, and the Court then informed counsel for respective parties that at 9:30 a. m. on said day, he had received the

following communication from the foreman of the jury, to wit: "June 9, 1944, Judge Barnes: May it please the Court to grant the request of the jury that the testimony of Messrs. Short, Hirsch, and Robe be read to them at this time. Joseph M. Callner, foreman."

Whereupon, the defendant, Hans Max Haupt, by his counsel, then and there objected to the reading of the testimony of the defense witness, Short, and of the Government's witnesses, Hirsch and Robe, and again called the Court's attention to the erroneous instructions of the jury, claimed by the defendant in the giving of paragraphs 53 and 54 on the Court's charge to the jury and to the refusal of the Court to grant the defendant's request for the withdrawal or modification of said paragraphs 53 and 54 of the Court's charge to the jury, and the defendant, by his counsel, objected to any repetition of the hearing by the jury of the testimony of said witnesses, Short, Hirsch, and Robe, and the defendant, by his counsel, further objected to the order in which it was proposed to read such testimony to the jury, that is to say, to the reading of the testimony of the defense witness, Short, first to the jury and the reading of the testimony of the prosecution's witnesses, Hirsch and Robe, last to the jury, but the Court overruled each and all of

the objections of the defendant, by his counsel, so made as
1822 aforesaid; to which rulings of the Court in overruling said objections, and each of them, of the defendant, the defendant, by his counsel then and there duly excepted.

And thereupon, the Court ordered and directed counsel for the defendant to read to the jury, upon the jury's return to the courtroom, the transcript of the testimony of the defense witness, Short, and the Court further directed that counsel for the Government should immediately thereafter read to the jury the transcript of the testimony of the Government's witnesses, Hirsch and Robe; to which orders and rulings of the Court, the defendant, by his counsel, then and there duly excepted; and it was further ordered by the Court that the compliance of defendant's counsel with such order and direction of the Court to read to the jury the transcript of the testimony of the defense witness Short should be without waiver of the objections and exceptions of the defendant and without prejudice to the rights of defendant with respect to such objections and exceptions.

And the defendant's counsel, in connection with and in support of his said objections and exceptions, asked that the record show that at that moment the jury had been deliberating for a period of twenty-four (24) hours since the submission of the case to the jury, and without interruption of their deliberations for the purpose of sleep.

And, thereupon, the jury were summoned from the jury room where they were deliberating, and the jury returned to the courtroom to hear the reading of the transcript of the testimony of the witnesses, Short, Hirsch and Robe, and the transcript of the testimony of said witnesses, Short, Hirsch and Robe, was then read, in the order named, to the jury, in the courtroom, as appears in the transcript of proceedings herein, on pages 1621 to 1651, inclusive, ante; to all of which proceedings the defendant, by his counsel, duly excepted.

1823. And, thereupon, immediately after the reading of the transcript of the testimony of the witnesses, Short, Hirsch and Robe, and before the retirement of the jury, the Court gave the following oral instruction to the jury, to wit: Pursuant to the written request of the jury through your foreman there has been read to you a transcript of the testimony of the witnesses, Short, Hirsch, and Robe. The jury are cautioned to bear in mind that they have now heard the testimony of these three witnesses twice while they have heard the testimony of the other witnesses only once, and that they shall not allow the fact that they have heard the testimony of these three witnesses twice to cause them to give undue importance or weight to it. The jury should, on the other hand, consider the testimony of these three witnesses, and that of each of them, as though they had heard it but once and consider it together with all the other evidence in the case.

1824. And the defendant, Hans Max Haupt, by his counsel, duly excepted to all of said proceedings pertaining to the summoning of said jury from its retirement after deliberating upon their verdict for approximately 24 hours without arriving at any verdict, and to the reading of the transcript of the testimony of said witnesses, Short, Hirsch, and Robe, and to the review, repetition, and reiteration of that portion of the evidence and testimony of witnesses in the case, which was only a very small fraction or portion of the evidence and testimony of witnesses offered and presented on behalf of the defendant, upon the trial of said cause and which was a still smaller fraction and portion of the entire evidence presented in the case and of the examination and cross-examination of witnesses produced upon the trial of said cause.

1825. *Verdict*

And thereupon, the jury again retired to consider their verdict and thereafter on, to wit, the 9th day of June A. D. 1944, the jury returned a verdict against the defendant herein, which said

verdict was as follows: "We, the jury, find the defendant, Hans Max Haupt, guilty as charged in the indictment."

Whereupon, on, to wit, the 9th day of June A. D. 1944, immediately after the return of said verdict and in the presence of the jury, in open Court, the foreman of the jury presented to his Honor, Judge John P. Barnes, the following written communication, signed by all of the members of the jury, to wit: "June 9, 1944. Your Honor, Judge Barnes: Realizing fully that our function terminates with the rendering of our verdict, we, the jury, are moved humbly to beseech your Honor's consideration in dealing mercifully with this defendant. In conformity with your Honor's instructions, neither pity nor sympathy has entered into our deliberations. In this plea, we express only what is in our hearts. Respectfully." (Signed by the Twelve Jurors in said cause.)

Whereupon, the defendant, by his counsel, requested that the records show that the verdict of the jury was read at 3:39 p. m., 9th day of June A. D. 1944, after the jury had been out and deliberating upon their verdict since 11:20 a. m. on the 8th day of June A. D. 1944.

1826 Whereupon, on, to wit, the 13th day of June A. D. 1944, the defendant, Hans Max Haupt, by his counsel, then and there moved the Court that said verdict finding him guilty as charged in the indictment, be set aside and that a new trial be granted in said cause, and the defendant filed his said Motion to set aside said verdict and to grant a new trial in said cause, in writing, in words and figures as follows, to wit:

1827 (Motion for new trial omitted. Printed side page. 101 ante.)

1834 *Motion for new trial overruled*

And thereupon, on, to wit, the 14th day of June A. D. 1944, after hearing the arguments of counsel, the Court overruled and denied the said motion of the defendant, Hans Max Haupt, to set aside the verdict, and for a new trial in said case; to which ruling of the Court in overruling and denying said motion to set aside the verdict and for a new trial, the defendant, Hans Max Haupt, by his counsel, then and there duly excepted.

1835 Whereupon, on, to wit, the 13th day of June A. D. 1944, the defendant, Hans Max Haupt, by his counsel, then and there moved the Court to arrest judgment on said verdict, and said defendant filed his said Motion in arrest of judgment in said cause, in writing, in words and figures, as follows, to wit:

1836 (Motion in arrest of judgment omitted. Printed side page. 108 ante.)

1838 *Motion in arrest of judgment overruled*

And thereupon, on, to wit, the 14th day of June A. D. 1944, after hearing the arguments of counsel, the Court overruled and denied the said Motion in arrest of judgment of the defendant, Hans Max Haupt, to which ruling of the Court in denying said Motion in arrest of judgment, the defendant, Hans Max Haupt, then and there duly excepted.

1839 And the defendant, Hans Max Haupt, by Paul A. F. Warnholtz and Frederick J. Bertram, his attorneys, tenders this, his Bill of Exceptions (consisting of four volumes, pages of which are numbered consecutively from number 1 (a) and (b) to number 1839, both inclusive) and prays that the same may be signed, certified, and sealed by the Judge of this Court, pursuant to the statute and rules of Court in such case made and provided.

PAUL A. F. WARNHOLTZ,
FREDERICK J. BERTRAM,
Attorneys for Hans Max Haupt, defendant.

Presented to me this — day of September, A. D. 1944.

———, *U. S. District Judge.*

1840 In United States District Court

[Title omitted.]

Certificate of Judge to bill of exceptions

This is to certify that the foregoing Bill of Exceptions tendered by the defendant, Hans Max Haupt, (consisting of four (4) volumes, pages of which are numbered consecutively from one (1) (a) and (b) to 1839, inclusive), contains all of the matters presented to the Court, before trial, by pleadings, demurrers, motions, etc., and the rulings of the Court and exceptions thereon, and contains all of the evidence introduced upon the trial, except the exhibits which will be certified by the Clerk of this Court to the Circuit Court of Appeals of the Seventh Circuit, and all of the instructions given to the jury by the Court, and proceedings had upon said trial, as well as proceedings had after said trial upon motions of the defendant, therein, and that said Bill of Exceptions is correct in all particulars and is hereby settled and allowed by the Court, and made a part of the record in this cause.

Dated at Chicago, Illinois, this 22nd day of September A. D. 1944, nunc pro tunc as of the 19th day September 1944.

[seal]

JOHN P. BARNES,
United States District Judge.

Presented in open court this 19th day of September A. D. 1944.

[SEAL]

JOHN P. BARNES,
United States District Judge.

1841 In United States Circuit Court of Appeals, Seventh Circuit

8607

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

HANS MAX HAUPT, DEFENDANT-APPELLANT

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

Order granting leave to prosecute appeal in forma pauperis

On motion of counsel for appellant, and on consideration of the affidavit of poverty of appellant, it is ordered that appellant may prosecute this appeal in forma pauperis.

It is further ordered that the transcript of the record in this cause may be not printed, that counsel for appellant and for appellee may withdraw the original certified transcript of record for use in preparation of their briefs, said record to be returned to the filed of this Court at the time of filing said briefs, and that four typewritten copies of appellant's brief, in lieu of the printed copies required by the rules of this Court.

1843 In the United States Circuit Court of Appeals for the Seventh Circuit

No. 8607

[Title omitted.]

Memorandum of authorities

Filed Oct. 26, 1945

1844 During the oral arguments in the above-entitled cause our attention was directed to the question of whether or not, if any of the overt acts, either as alleged or proven, submitted to the jury as possible overt acts upon which it could base a conviction for treason, were insufficient, it would be necessary for the court to reverse the conviction. We have therefore addressed ourselves to that problem, keeping in mind Instruction No. 51 (Bill of Exceptions 1591), by which instruction the jury were told:

"It is not necessary for the Government to prove by two witnesses the performance of more than one of the submitted overt acts, providing, of course, the other elements of the alleged crime are proven beyond a reasonable doubt as heretofore defined in these instructions."

It would seem from a review of the authorities, including Cramer v. United States, 65 S. Ct. 918, 89 L. Ed. Advanced Sheet No. 13, page 937, et seq., footnote 45; Stromberg v. California, 283 U. S. 359, 368; Williams v. North Carolina, 317 U. S. 287, 292; and Roth v. Swanson, 145 F. (2d) 262, 269 (C. C. A. 8), that the failure to prove or the insufficiency of any of the submitted overt acts would require a reversal of the conviction.

We reached this opinion despite the fact that in the case of Stephan v. United States, 133 F. (2d) 87, overt acts Nos. 1, 2, 8, and 9 (all of which were submitted to the jury) were re-
1845 jected by the United States Court of Appeals for the Sixth Circuit as not proven. In that case the court, after reviewing the evidence, held that submitted overt acts Nos. 3, 7, 11, and 12 had been sufficiently proven as overt acts, but that submitted overt acts Nos. 1, 2, 8, and 9 had not been proven as overt acts and were insufficient. As in the case at bar the jury had been instructed as follows:

"Now, there is only the one count in this indictment, and your verdict will be either 'guilty as charged' or it will be 'not guilty.' That is the only two.

"I have talked a good deal about overt act, but you don't need in your verdict to report, and divide this charge up and say, 'We find this and we don't find that.'

"If you find he did the things I have talked about, and with the intent I talk about and find that one of the overt acts or more of them has been proved by two witnesses or more than two witnesses, and you then return a verdict of guilty as charged, you don't add anything more and tell me which overt acts you found. You don't say anything more in this verdict except if you find this defendant guilty, you say, when they ask you what your verdict is, you say, 'Guilty as charged.' That is what your foreman will say for all of you."

Although this instruction was given to the jury and although the Court of Appeals specifically found that four of the submitted overt acts had been insufficiently proven, the conviction was sustained and certiorari denied. In the opinion, however, no mention is made of the instruction in question and it appears that the propriety of the verdict, when considered in the light of the in-
struction given, was not raised in the Court of Appeals.
1846 The Court merely decided, in accordance with the general rule, that "The failure to establish all the overt acts alleged is not fatal upon a motion for peremptory instruction" and that "if one or more of such acts have been established, all others may be disregarded as surplusage."

In concluding this memorandum, however, we wish to strongly urge again the sufficiency of all of the overt acts submitted in

the case at bar and particularly of overt acts Nos. 10 and 11, the subject of some discussion at the oral argument. In the Stephan case overt act No. 3, which was upheld by the Court of Appeals as sufficient, merely alleged "that Stephan on April 18, 1942, escorted Krug from Mrs. Bertelmann's home to the automobile then being used by Stephan" (which was standing in front of Mrs. Bertelmann's house). The evidence showed that Krug, an escaped German prisoner, came to Mrs. Bertelmann's home and that she called Stephan who came to her home and met Krug. Krug testified that he left Mrs. Bertelmann's apartment with the appellant, walked to his car, and drove to the appellant's residence. Mrs. Bertelmann testified that she watched them leave the apartment together, observed them go to appellant's car and saw appellant open the door. She did not see them get in, although she assumed that they did. The court, upon review, held that this was a sufficient overt act of treason.

In the case at bar the evidence relating to overt acts No. 10 and 11 showed that the defendant drove his son from a place in Chicago around the corner from 2234 North Fremont
1847 Street to the home of Andreas Conrad Grunau, his friend, at 6361 North Leoti, a distance of many miles; that he stayed with his son all during the various conversations that were held by his son and Grunau relative to the procuring of a job at the optical factory; that he then drove his son to the home of Mr. Koch, where a similar process was repeated and where Hans, when questioned concerning the boy's draft status, said he had sent him to the F. B. I. and the draft board that morning; and that he thereafter drove the boy back to his home.

When viewed in its "setting," including Hans' complete knowledge of his son's saboteur status and of his complete knowledge of the boy's plan to get into the optical company and steal the plans of the Norden bomb sight, we believe that these acts are much stronger overt acts of treason than the above referred to in the Stephan case or the "tippling in a tavern" rejected by the majority of the Court in the Cramer case. In the latter decision four Justices strenuously contended that the act of "tippling" in the tavern with Thiel was an act of aid and comfort. In our case there could be little doubt of their feeling relative to overt acts Nos. 10 and 11.

Respectfully submitted.

J. Albert Woll,
J. Albert Woll,
United States Attorney.
Richard G. Finn,
Richard G. Finn,
Special Assistant to the United States Attorney.

1848 [File endorsement omitted.]

1849 In the United States Circuit Court of Appeals for the Seventh Circuit

No. 8607—October Term and Session, 1945

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

HANS MAX HAUPT, DEFENDANT-APPELLANT

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

Opinion

Filed December 20, 1945

Before EVANS, MAJOR, and KERNER, Circuit Judges

EVANS, Circuit Judge. Hans Max Haupt was tried and convicted on an indictment which charged him with the crime of treason. It was his second trial and his second conviction, on a charge of treason. The death sentence on the first trial was reversed on appeal. (136 F. 2d 661.) On this conviction on a second indictment, the trial judge sentenced him to imprisonment for life and to pay a fine of $10,000.

Giving Aid and Comfort to a war enemy, the German Reich, in June 1942, by harboring and assisting its agent, Herbert Haupt, was the heart of the charge. Herbert was the son of the defendant. Herbert and his comrades came to this country, in June 1942, in a German submarine, landed on the Florida coast, cached their supplies on the beach, and dispersed to their various assignments. Herbert was later executed pursuant to the judgment of the military tribunal (See Ex Parte Quirin, 317 U. S. 1).

The story of this German war stratagem is quite fully stated in the opinion of this court in 136 F. 2d 661, and more particu-
1850 larly in the decision of the Supreme Court in 317 U. S. 1. See also Cramer v. United States, 325 U. S. 1.

In Ex Parte Quirin, supra, the Supreme Court disposed of a case where the trial by a military commission, of the German saboteurs, who were the members of the expedition of whom Herbert was one, was reviewed. We refer to those opinions for a factual background and thereby avoid repetitions. The story is one of great hazard and audacity. The venture had for its objectives the destruction of the aluminum plants in the United States, as

well as other vital industries, also our transportation systems. This was to be accomplished through the use of high power explosives, made in German war plants. The participating parties had, for the most part, lived in the United States. They had been thoroughly trained as expert saboteurs to do widespread damage to places, people and plants where such damage would most effectively cripple the United States in the then existing World War. Their devotion to German Nazi-ism was suicidal in its intensity.

In the instant case, there was a lengthy trial before a court and jury. The evidence came from F. B. I. investigators, the fiancee of the son, the jail-mates of the defendant in the County Jail in the summer of 1942, and co-workers and employers of defendant. It also came from co-members in various German associations, particularly from members of the Veterans of the German Army in World War I, of whom defendant was one. Defendant did not take the witness stand. His wife testified, but her testimony was brief and unimportant.

Upon the rendition of the verdict, the trial court made an earnest, sincere statement explanatory of his sentence of life imprisonment instead of death—on the basis of a recommendation of mercy given by the jury in the form of a letter received after verdict.

The usual pleadings in criminal cases were filed by defendant, namely, demurrer to the indictment, motions for directed verdict, for new trial, exceptions to instructions, objections to evidence, etc.

Defendant, Hans Max Haupt, was born in Germany in 1894. His son, Herbert, the saboteur, was also born in Germany, in 1919. Defendant came to this country in 1923, and his wife and son followed two years later. Defendant, in this country, worked as a painter, decorator and bricklayer by trade. He also worked with his wife as a "couple" in a Chicago suburb. Herbert had worked for the Simpson Optical Company, and was being trained as an optical worker. In the midst of the training, Herbert and Wolfgang Wergin, a friend, took a trip to Mexico, leaving Chicago in June 1941. Eventually they reached Tokyo, and finally Germany.

In Germany, Herbert attended a school, military in character, devoted to training saboteurs. The soldiers attending were taught the use of explosives, how to place them and to fire them, and to avoid detection, etc., and they were also taught the arts commonly practiced by spies, etc.[1] One of Herbert's classmates and co-actors on this bold and fanatical expedition, Ernest Peter Burger, detailed

[1] They learned how to connect time devices with explosives; tested formula explosives and incendiaries; how to place explosives, undetected, on railroads; learned how to destroy railroad engines and rolling stock; how to paralyze aluminum plants.

their training, and what is more important—their mission to this country. He stated that Herbert "received orders to procure an automobile and put this automobile to the disposal of our group." "He also received orders to procure information and details concerning the optical industry in Chicago, especially of the Norden bomb sight, and furnish information which was * * * to equip us to carry out our assignments." The automobile was to be used to transport the explosives from the cache where hidden and to give "range to the operations." Herbert was ordered to go directly to Chicago.

When the schooling and instructions in Germany were completed, the expedition, composed of two units of four men each, was outfitted with explosives and other equipment,[2] with large sums of money,[3] and embarked for the United States on German submarines. One of the submarines, on which Herbert was a passenger, landed in Florida. They went ashore and Herbert participated in burying the equipment in the beach. He then came to Chicago. Herbert received $5,000 which he carried in his money belt and $400 in smaller bills. He was also given a zipper bag of which he was told to take particular care, for it contained $10,000.

Upon arrival in Chicago Herbert went to the home of a relative, and his parents were summoned there by phone. They evi-
1852 dently had no prior notification of his coming and were surprised at seeing him. Herbert related to his parents, his travels from Chicago to Germany, and his mission to this country.[4] Herbert thereafter went to his parents' home where he stayed the week of June 22.[5] His father went with Herbert on two successive evenings to an automobile agency to effect the purchase of a Pontiac car.[6] His father (and mother) also went one evening to the home of one Grunau, and later to the home of one Koch, both foremen at the Simpson Optical Company, where Herbert asked to be reinstated in his former position at that company.[7] It is upon these activities that the overt acts of treason alleged in the indictment, and submitted to the jury, were predicated. Herbert was seized by Government officials on Saturday morning, June 27.

Proof of treason necessitates the testimony of two witnesses to at least one legally sufficient overt act.[8] Treason is a crime defined by the Constitution rather than by statute. The Constitution (Article III, Section 3, clause 1) reads:

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[2] 8 boxes of TNT, chemical equipment and fuses and detonators, timing devices. They were also given draft registration cards and social security cards. They received shovels.

[3] Leader of Witness Burger's group was given an emergency fund of $82,000. Herbert's leader had $66,000 in addition.

[4] Testimony of Hamby, Majerczak, Hirsch and Rose.

[5] and [7] will be discussed later in detail.

"Treason against the United States shall consist only in levying war against them or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act or on confession in open court."

Defendant's attack on the validity of the judgment is most vigorously and extensively directed at the overt acts, their sufficiency, their proof and the judge's charge to the jury in respect to them. Numerous other assignments are made and earnestly argued. But the attack on the overt acts appears to be the most confidently asserted one and the one most extensively argued. The decision of the majority of the court in the recently decided case of Cramer v. U. S. supra, doubtless accounts for defendant's chief and confident reliance for his extended attacks on the overt acts rulings, although some of the other assignments of error would have been quite as impressive with counsel as they are with us, were it not for the ruling in the Cramer case.

We here set forth the various assignments of error which the defendant presents:

1853 (1) The acts charged do not constitute the crime of treason.

(2) The submitted overt acts were colorless and innocuous and not treasonable in nature.

(3) The duplicitous indictment charged many offenses even of different criminal classification.

(4) Denial of motion to quash indictment because of pendency of prior treason indictment, the conviction under which this court reversed and remanded with directions for a new trial.

(5) Denial of bill of particulars, seeking details of how the son was to be assisted in obtaining employment and in what manner and by what acts the son was harbored; in what manner the son would be aided in carrying out his mission in purchasing a car.

(6) The evidence of statements made up to six years prior to the time of the overt acts, to show intent (much of it pre-war conversations); statements and admissions made while in custody, were inadmissible, not being made in open court; admission of evidence of conversations occurring outside presence of appellant; improper examination and intimidation of witness Zermer; improper for the Government to prove by but one witness overt acts which they knew could not be submitted because not provable by two witnesses; evidence as to withdrawn overt acts should not have been introduced or submitted to jury. Overt acts 1-9, 18, 19, 25-29 were not supported by two witnesses and it was improper to use any evidence relating to any such acts to obtain a conviction upon any overt act submitted to the jury.

(7) Court improperly received in evidence highly prejudicial exhibit without requiring that they be first connected up with the defendant.

(8) Court improperly refused to receive in evidence copy of Ill. Stat. relating to accessories after the fact, which it is contended is receivable in a Federal trial where not inconsistent with Federal statute or constitution.

(9) Court should have directed verdict of not guilty because of insufficiency of evidence to support charge of overt acts submitted; there was error in overruling motion for new trial, also motion in arrest of judgment.

1854 (10) Errors occurred in 21 instructions which were given and in refusal to give 15 proffered instructions. In particular the court's charge failed to impress upon the jury the fact that acts done solely to aid his son as an individual did not constitute treasonable action.

(11) Error to send to jury the entire indictment containing many prejudicial statements, in particular the unsubmitted overt acts.

(12) Error to send to jury room the typewritten copy of instructions thereby accentuating errors therein.

(13) Government counsels' argument was prejudicial, inflammatory and appealing to war hysteria.

(14) The verdict was the result of war hysteria and misappresion of the law and facts because of erroneous instructions; the verdict was induced by physical exhaustion of the jury in deliberating 28 hours without sleep; and was the result of the improper reading of the testimony of three witnesses' testimony, at the request of the jury; 24 hours after submission of the case to them.

(15) The general verdict cannot be sustained, if any specific overt act or its proof were insufficient. There was insufficiency of proof both as to overt acts submitted and overt acts withdrawn. The court cannot say on which of the alleged overt acts the jury found against the defendant.

A study of the entire record leaves us with the impression that the trial was conducted in a manner such as to impart confidence in the fairness and the earnestness of the effort of the court to accord the defendant every right which our laws extent to all, regardless of the nature of the crime charged, or the strength or weakness of the evidence which the accused might offer.

It was no doubt unfortunate that the trial occurred before the decision in Cramer v. U. S., supra, and the trial judge did not have the benefit of the discussion which appears in the opinions in that case.

Concededly* there must be direct proof, by two witnesses, to each overt act, submitted to a jury, upon whose general
1855 verdict the sentence in a treason case is pronounced. There may be overt acts of legal sufficiency and established by the direct testimony of two witnesses, but the conviction will fall if the court submitted to the jury certain alleged overt acts which were charged in the indictment but which were either legally insufficient or not sufficiently established to present a jury question, by the direct testimony of two witnesses. The holding of the court in the Cramer case may make conviction in treason cases difficult. It may in actuality make treason a theoretical crime, a paper crime, but we have no alternative but to follow the law as there announced by the Supreme Court.

True, the prosecution might have withdrawn several of the alleged overt acts charged in the indictment. It did in fact withdraw over half of them. It could have withdrawn more and made its conviction less vulnerable to the many attacks which defendant makes to the evidence, instructions, etc., thereon.

Doubtless counsel for Government believed they were trying a real case, not toying with a theoretical or supposititious one. They were confronted by actualities, not a theory. They were not preparing the facts for an interesting detective story. It was treasonable action with which they were dealing, and the overt acts and the two witness rule provoked a full and complete presentation of the facts, not cautionary action inspired by a fear of error in the charge or the production of evidence. Perhaps a special verdict where the jury would be required to pass on each overt act separately would have helped some. Even then additional questions interrogating the jury as to each overt act found to be established would, we believe, be necessary to avoid the multitude of questions which astute counsel has raised although some of them are not worthy of serious consideration.

Defendant asserts that there are numerous overt acts alleged, and which were submitted to the jury but which had not the testimonial support of two witnesses.

The law being as announced in the Cramer case, it is our duty to carefully examine the long record here involved and determine if the requisite constitutional measure of proof was adduced by the Government. In performing this task, we have, as we read the respective witnesses' testimony, recorded the evidence relevant to any submitted overt act, to the said overt act to which it
1856 appertains. Because of the indispensability of such proof on one theory which has been advanced by government

*In brief filed by Government after oral argument.

counsel, as to each overt act submitted we set forth such evidence and overt acts seriatim.

The indictment charged 29 overt acts. Only 12 were submitted to the jury. The others were withdrawn as overt acts. Generally stated, six of the submitted overt acts charged harboring of the son for six successive days from June 22 to June 27, inclusive; two[9] charged accompanying the son to the respective homes of former employers to secure re-employment; and the remaining four[10] charged accompanying and assisting the son in the purchase of an automobile.

The overt acts submitted to the jury were numbers 10 to 17 and 20 to 23, both inclusive. We, therefore, begin with overt act No. 10.

OVERT ACT NO. 10

"Said Hans Max Haupt, on or about June 22, 1942, accompanied said enemy, Herbert Haupt, to the home of Andreas Conrad Grunau, 6361 Leoti Ave., Chicago, Illinois, for the purpose of assisting the said Herbert Haupt in securing employment so that the said enemy might conceal his identity and mission as an agent of the German Reich and be permitted and enabled to carry out and pursue his said mission."

Concerning this Act No. 10, eight witnesses, including Mr. and Mrs. Grunau, testified. They testified to Mr. and Mrs. Haupt and Herbert leaving the Haupt residence, getting into the Plymouth car, with Herbert driving, but exchanging seats with his father, after a few blocks, and the father driving them to the Grunau home, where they all alighted, met with the Grunau women folk, and entered the Gerunau home. Mr. and Mrs. Grunau both testified to Herbert's asking for his position back with the Simpson Optical Co., and Mr. Grunau told Herbert to come down on Thursday to fill in an application. The Grunaus' daughter testified to the visit of the Haupts that evening. The remaining testimony dealth with the Haupts driving away, after having been at the home for an hour or an hour and a half (Mr. Grunau had come in after the Haupts had arrived). Mr. Haupt drove the car on leaving the Grunau residence. The verbatim testimony in support of this brief fact statement is set forth below.[11]

[9] Overt acts 10 and 11.

[10] Overt acts 14, 14, 15, and 16.

[11] Andreas Conrad Grunau, Government Witness (Superintendent of Simpson Optical Mfg. Co.)

". . . a short time later he asked me for a job. . . . Q. Who was there when he asked you for the job A. Myself, Mr. Haupt, my daughter . . . Q. What was said about a job? A. He said he would like to get the job back . . . with whom? A. Simpson Optical Company. . . . A. I told him it might be possible, only he should come down on a Thursday and fill out an appli-

Overt Act No. 11. This charge is:

"Said Hans Max Haupt, on or about June 22, 1942, accompanied the said Herbert Haupt to the home of Heinrich Koch, 7240 N. Odell Ave., Chicago, Illinois, for the purpose of further assisting said enemy in procuring employment, so that he might conceal his identity and mission as an agent of the Government of the German Reich and be permitted and enabled to carry out and pursue his said mission."

The evidence of five witnesses, including Mr. and Mrs. Koch, on this count, disclosed the fact that the Haupts, with the father driving left the Grunau residence and drove to the Koch home,

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cation so as he left the company he would have to fill out an application * * *. So I ordered him down—told him to come down Thursday morning to the factory. * * *"

Josefa Grunau, Govt. Witness, wife of Andreas Grunau.

"Q. Do you recall anything else that he said at that time? A. Well, he hoped to get his job back * * * Q. Who was there? A. My daughter, myself, and Mr. Haupt." "* * * how long did they remain at your home that evening? A. About three quarters of an hour, or an hour * * *."

Edith McGowan, Government Witness (Daughter of Grunaus').

"Q. Calling your attention to the evening of June 22, 1942, did the Haupts come out to your home * * * A. Yes, sir. Q. Who came? A. Mr. Haupt and Mrs. Haupt and the son. * * * Q. Do you recollect how they arrived at your house? A. In a car. Q. Do you know who was driving? A. Mr. Haupt."

Richard W. Axtell, Government F. B. I. Agent.

"At about 7:30 that night I saw Hans Haupt and Erna Haupt and Herbert Haupt go out of the front door of the Hans Haupt home at 2234 North Fremont. * * * they got into a Plymouth car sedan * * *. Herbert Haupt got into the driver's position of the car and drove the car away * * *. Well, they drove around the block and then the car stopped * * *. I saw Herbert Haupt get out from the driver's position of the car and at the same time Hans Haupt got out of the right side of the car and the two of them changed positions with each—Hans Haupt then taking the driver's seat. * * * They proceeded * * * the car stopped. * * * that was the residence of Andreas Conrad Grunau * * *. As the car pulled up, and as the car stopped the three persons—that is Hans, * * * and Herbert * * * got out of the car and walked up the front sidewalk to the Grunau residence." (They stayed an hour and a half.) "* * * Then I observed Hans Haupt, Herbert Haupt and Erna Haupt coming out of the Grunau residence and they again got into the Plymouth car * * * Hans Haupt * * * was then driving the car * * *."

John A. Lynch, F. B. I. Government Agent.

"At 7:45 P. M. I observed Mr. and Mrs. Haupt and Herbert emerge from the residence at 2234 North Fremont Street and enter the * * * automobile and proceed south * * * Herbert Haupt sat behind the wheel. * * * After proceeding * * * he exchanged * * * positions with Mr. Haupt. * * * It * * * proceeded to 6361 North Leoti street. * * * that residence was the residence of Mr. Grunau. * * * approximately 9:30 P. M. Mr. and Mrs. Haupt and Herbert Haupt emerged from the residence * * * and re-entered the * * * automobile. * * * At that time Mr. Max Haupt was driving."

Pennel V. Robe, F. B. I. Agent.

Tells of the father and mother and son driving from home on 22nd, and father driving, after switching with son. "Mr. and Mrs. Haupt and Herbert Haupt, after arriving at 6361 North Leoti got out of their car * * * Then they entered the house * * *." (This was sometime after 7:30 P. M.) "Q. When did they come out of that place? A. At approximately 9:30 P. M. * * * They entered the Plymouth automobile and drove away from 6361 North Leoti. Q. Who was driving? A. Mr. Haupt."

Joseph W. Kriofske, F. B. I. Agent.

"Q. What did Herbert * * * Hans * * * and Erna Haupt do after they came out of that apartment building that day? A. They got into a 1940 Plymouth sedan * * * Herbert drove the car approximately two blocks, at which he stopped the car and changed positions with his father who then proceeded to drive * * * they went to 6361 North Leoti, arriving there approximately 8:00 P. M. * * * Herbert * * * went up to the front door * * * Q. Who went into the house? A. Mr. and Mrs. Haupt. * * * They remained in the house until approximately 9:30 P. M."

James C. Conerty, F. B. I. Agent.

"Q. On that date (June 22, 1942) about 9:30 P. M. did you go into the neighborhood of 6361 North Leoti Avenue * * * A. I did * * * after we arrived we observed three individuals leaving the address at 6361 North Leoti. * * * we observed they were Mr. and Mrs. Haupt and Herbert * * *."

arriving there about 9:30. Mr. Koch is the Shop foreman and supervisor for Simpson Optical Company, under whom
1858 Herbert had worked in his prior employment there. Herbert asked for re-employment. The visit lasted about an hour, when the trio emerged, with Hans driving the car, to the Haupt home. The specific evidence in point is set forth below.[12]

1859 Overt Act No. 12. Overt Act No. 12 is charged in the indictment in this language:

"Said Hans Max Haupt, on or about June 22, 1942, harbored and sheltered the said enemy Herbert Haupt at the home of
1860 Hans Max Haupt and Erna Haupt, 2234 N. Freemont St., Chicago, Illinois, well knowing that the said enemy was an agent of the Government of the German Reich in the United States to commit sabotage, act as a spy and perform other services for said Government as aforesaid, all with the intent and for the purpose of assisting said enemy Herbert Haupt in carrying out his mission as an agent of the Government of the German Reich as aforesaid."

The evidence on this, as well as some of the other "harboring" acts submitted, consists simply of F. B. I. agents testifying they saw the several Haupts enter or leave the front entrance of the 2234 N. Fremont Avenue apartment building. The legal sufficiency of this evidence as "direct" or "circumstantial" will be subsequently discussed. Mr. and Mrs. Kluczyk, the landlord and his wife, who lived on the first floor of the three story building (which also had three apartments in the rear, not reachable by the front entrance) testified that on the evening of the twenty-second, Mr. and Mrs. Haupt and Herbert came to pay a brief call and in answer to the question where Herbert had been, was told Herbert had been to Mexico, South America, and "all over." Mrs. Kluczyk had seen Mrs. Haupt talking to Herbert out on the sidewalk, in the morning. Several of the F. B. I. agents saw all the Haupts enter the apartment building and testified to the condition of the Haupt apartment lights on entry, and shortly after entry.

[12] Heinrich Koch, Government witness.
He testified he knew Herbert Haupt. Herbert worked under him in his department. Herbert was a lens grinder and polisher. "Q. Calling your attention to the 22nd day of June, 1942, in the evening of that day, did Hans Haupt and Erna Haupt and Herbert Haupt come to your home? A. Yes, sir. Q. Approximately what time was it when they got to your house • • • A. It was about 9:30 • • •" "Mrs. Haupt said 'Herbert is back. I want to show him to you, so you won't be surprised if you see him one morning in the shop • • • then, he said that he wants to start working again in defense work, and he talked quite a while to Mr. Grunau about it, and I told him then, well.— Q. Did he say anything on the subject of getting his job back? A. Yes, he likes to get back his job. Q. Was that at the Simpson Optical Manufacturing Company? • • • yes • • • Well, I told him, 'Well, you are in that age, where you will get drafted,' and then Mr. Haupt said, 'I sent him all this morning to the Draft Board and to the FBI.' • • • And he (Herbert) said, 'Well, maybe through my two years' experience as a polisher and lens grinder, I might get deferment.' • • • The only thing I can recall is that Mr. Haupt told—said that he wants to buy him a car so that he can go to work, because he used Herbert's car all the time and she is in pretty bad shape, and he wants to buy another car."

as indicative of occupancy by them shortly after entry. The precise evidence on this Overt Act is also set forth below.[13]

Anna Koch, Government witness. Wife of Heinrich Koch. Knew Herbert Haupt and Hans Haupt. "Q. Calling your attention to the evening of June 22, 1942, at approximately 9 o'clock, were you home that evening? A. Yes. Q. Will you tell us what happened? A. Maybe 9:30 Mr. and Mrs. Haupt and Herbert Haupt came to our house. * * * Then *they talked about his son wanted work.*" "Q. Do you recall what was said. A. Well, they want to say 'Hello,' to see my husband on business when he came in. Q. Into the factory, do you mean? A. Yes, sir." Asked Herbert where he had been and he replied Mexico, and Herbert said he had just bought a nice new suit.

Richard W. Axtell, Government Witness.
On June 22, 1942, he was watching the Haupt movements, saw them (Hans, Herbert, and Erna Haupt) drive from Grunau home to Koch home. "With Hans Haupt who was then driving the car—then we followed the car as it drove off from that address (Grunau) and we followed it and saw them stop in front of * * * residence of Heinrich Koch. * * * As the car stopped the three individuals, that is Hans * * * Erna * * * and Herbert * * * got out of the car and * * * went up to the front porch of the Koch residence. * * * thereafter they were admitted to the residence. I saw them * * * They arrived there at about 10:00 P. M. and they stayed until about 10:30 * * * I saw the three of them, that is Hans * * * Erna * * * and Herbert * * * came again, came out from the Koch residence. * * * they * * * got into the Plymouth * * * Hans Haupt driving the Plymouth then proceeded on south on Fremont Street."

John A. Lynch, F. B. I. Agent, Government Witness.
Assigned to following Herbert Haupt's actions on June 22, 1942. "What did they do after they entered the Plymouth automobile? Did you see who was driving at that time? A. At that time Mr. Max Haupt was driving. Q. Where did they go from there A. From there they proceeded to 7236 North Odell Avenue * * * At that residence the car was parked and the three individuals emerged from the car and entered that address * * *. That was the residence of Mr. Koch. * * * They remained in there approximately half an hour * * * They emerged, entered the car and proceeded back (to the Haupt home) * * *."

James C. Conerty, F. B. I. Agent, Government Witness.
"What, if anything, did Mr. and Mrs. Haupt and Herberf Haupt do when you saw them in front of 6361 North Leoti? A. They entered a Plymouth automobile and drove to the address 7236 North Odell." "At what time did Hans and Erna Haupt and Herbert Haupt arrive at 7236 North Odell? A. At approximately 10 P. M. * * * They parked their automobile and three of them entered that address. Q. Do you know now who lived at 7236 North Odell? A. Mr. and Mrs. Koch. * * * They remained there until about 10:30. At that time then they came out and got into the Plymouth * * *."

[13] Barbara Kluczyk, Government Witness, Landlady of Haupts.
"Q. When was the first time thereafter that you saw Herbert Haupt around your house? A. It was Monday, around eleven o'clock * * *." "Q. Would that be June 22, 1942? A. Yes. Q. Where were you at the time when you first noticed him? * * * A. I saw Herbert and his mother standing out on the sidewalk. * * * Q. When was the next time you saw Herbert Haupt? A. Monday evening. Q. That was the same evening, was it? A. The same evening, June 22, 1942. Q. Where did you see him on that occasion? A. In our apartment. * * * Q. Was any one with him. A. Mr. and Mrs. Haupt. * * * they rang the bell and I let them in * * *."

Stanley Kluczyk, Landlord.
"Q. Now, calling your attention to the 22nd day of June, 1942, in the evening were you at home? A. I was home. * * * Mr. and Mrs. Haupt and Herbert came in to me and said, 'Hello.' * * * it was a matter of minutes and they left." "I saw them leaving by their own car." Saw Herbert leaving by taxicab once or twice.

Frederick Martin Wittrock, Government Witness.
"Q. Calling your attention to the 22nd day of June, 1942, on Monday evening, where were you on that evening? A. I was at Kluczyk's home. * * * Mr. and Mrs. Haupt and also Herbert Haupt knocked at the door and came into the front room. * * * Mr. Kluczyk asked Herbert Haupt how far have you been, and he said, 'Well, South America, Mexico and all over'; * * *."

Pentel V. Robe, F. B. I. Agent
"Q. Calling your attention to Monday, June 22, 1942, at approximately 7:30 P. M. were you in the vicinity of 2234 North Fremont Street, Chicago? A. Yes, sir. * * * I observed a young man and older lady and older man come out of the address, at 2234 North Fremont Street * * *. They entered a car, * * *." (He identified Mr Haupt in the courtroom.)

Joseph W. Krupfske, F. B. I. Agent.
Testified he arrived at the Haupt home on June 22, at about 5:45 P. M. "At that time he observed three individuals coming out of the house at 2234 North Freemont."

1861 Overt Act No. 13. The specific wording of Overt Act No. 13 was:

"Said Hans Max Haupt, on or about June 23, 1942, accompanied the said enemy Herbert Haupt to the Warner Motor Sales, 958 Diversey Park Way, Chicago, Illinois, to arrange for the purchase of an automobile for the said enemy Herbert Haupt, with the purpose and intent of assisting the said enemy in carrying out his mission as an agent of the Government of the German Reich as aforesaid."

The testimony to support this overt act is that of four F. B. I. agents who were watching the Haupt movements stated they saw them leave the Haupt residence, go to a restaurant, and thence to the Warner Motor Sales, driving in the Plymouth car. They were seen to remain in the sales room for thirty-five or forty minutes, then leave together in the Plymouth car and drive back to the Haupt residence. The evidence is outlined
1862 below.[14] Overt Act No. 14. This overt act is couched in these terms:

"Said Hans Max Haupt on or about the 23rd day of June 1942, while at the Warner Motor Sales, 958 Diversey Park Way, Chicago, Illinois, signed a financial statement and an order for the purchase of an automobile and made an initial payment of

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He specified that he saw them coming out of the front entrance. He identified the three individuals as the Haupts.

James E. Conerty, F. B. I. Agent.

(Testifying re June 22) "Q. And did they subsequently stop at another address? A. They stopped at 2234 North Fremont. • • • Then went in the front entrance. • • • Q. who • went up the steps into that apartment building? • • • A. Herbert Haupt and his mother • • •" "Shortly after Herbert • • • and Mrs. Haupt entered that address, the lights in the front of the third floor apartment were extinguished."

[14] Edward C. Dixon, F. B. I. Agent.

"Q. Now, on the same afternoon, June 23, 1942, at approximately 5:15 P. M. were you in the vicinity of 2234 North Fremont Street • • • A. I was. • At that time (6 P. M.) I observed the young man, • • • and another man, an elderly man, middle aged. • • • come out of the house. • • • They entered the automobile. • • • Q. Where did they go? A. They went to the corner of North—northwest corner of Sheffield and Diversey, I believe it was the Warner Motor Sales. • • • The two men parked their automobile and went inside the Motor Sales room. Q. All right now, what did you do? A. Got out of the automobile and walked around the corner and observed the show room. Q. Did you see anyone in the show room? A. I did. Q. Who did you see there? A. The young man with the elderly man that was driving with him • • • (identifies elderly man as defendant). Q. How long did they stay in the Warner Motor Sales? A. They came out of the Warner Motor Sales approximately 7:35 • • •" (Testifies the men drove to the Fremont street address).

John A. Lynch, F. B. I. Agent.

"Herbert and Mr. Hans Max Haupt went into the Plymouth automobile and proceeded to the Warner Motor Sales • • •" "They emerged from there and returned to 2234 North Freemont Street where the car was parked."

Peter F. Schneider, F. B. I. Agent.

"Q. Where did Hans and Herbert Haupt go when they entered the automobile? A. They drove to Warner Motor Sales at 958 Diversey, West Diversey Parkway • • • They entered this business establishment." (Testified they were in the place about forty minutes.) "They again entered their Plymouth automobile and the car was driven to 2234 North Fremont • • •"

Frank F. Meech, F. B. I. Agent.

"They • • • drove to the Warner Motor Sales • • • Hans Max Haupt and Herbert Haupt entered the Plymouth automobile and drove to the Warner Motor Sales. • • • They remained there approximately thirty-five or forty minutes. • • • I saw them emerge at approximately 7:35 • • • They entered their Plymouth automobile and drove to 2234 North Fremont. • • •"

money toward the purchase of said automobile, with the intent and for the purpose of procuring an automobile for the said enemy, Herbert Haupt, and with the intent and for the purpose of assisting the said enemy, Herbert Haupt, to carry out his mission as an agent of the German Reich, as aforesaid, and to conceal the identity of Herbert Haupt as such agent."

The evidence on this overt act is that of two witnesses, a salesman, Vincent Farrell, who greeted Hans and Herbert Haupt when they came in and informed him Hans wished to purchase a good used car for his son Herbert. Upon their inquiry, he gave them the cost, the terms of sale, the amount of down payment, the credit arrangement. During the progress of the negotiations, Mr. Philip Vinson, the general manager, came in and was introduced to the Haupts. He OKed the arrangements, saw the deed signed by Mr. Haupt, the credit statement was taken and
1863 signed in his presence. The testimony of these two witnesses is summarized below.[15]

Overt Act No. 15. The 15th overt act is charged in this language: "Said Hans Max Haupt on or about June 24, 1942, again ac-

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[15] Vincent Christopher Farrell, auto salesman.

"Q. Were you on duty at the place of business of the Warner Motor Sales • • • on the evening of June 23, 1942? A. I was. Q. Did any prospective customer come in? A. About six o'clock there were two gentlemen that came in. I approached them, and they said they wanted to buy a good late model used car. • • • Q. Did the man, Hans Haupt, • • • say any thing to you? A. Well, I asked if I could be of help to him and he said, yes, he wanted to buy a good used late model car. So I showed him a number of cars. • • • He seemed to like this car (Pontiac) very much. Said he wanted to know if he could buy it on a time-payment. I said, Well, I have a car, but he says 'I do not intend to trade it in. It is for my son.' Q. What was for his son? A. This car that he was buying. So I said, 'You can buy it on time payments.' He wanted to know how much was required to pay down. So I said, 'If you will step over to my desk, we will set up the deal. I will show you just the required down-payment, and the monthly payments, the insurance, and so forth.' Q. What was the price of the car? A. $1,045. • • • Q. Was there any decision made as to the purchase of the car that evening? A. Well, I set up the deal • • • • • • "They wanted to know if they could put $10 down, and I said they could. They said, 'We will have the money, and we will have to bring in some cash.' • • • Hans Haupt wanted to know how much he would have to put down for the car. I said, 'That is approximately half the price of the car.' He wanted to know if he could put down $10 deposit and come the next day, the following day, and put down the balance. I said that would be perfectly satisfactory. So I wrote up the financial statement, and asked his name, and he told me, 'Hans Haupt.' He introduced me to his son as Herbert Haupt. I filled out the financial statement complete, to the Finance Company, and I wrote up the order, and he signed the order, and he put down, he put down a $10 deposit down on the car. • • • In the meantime, the manager came in. Q. Who is the manager? A. Phil Vinson. • • • He came in approximately 7 o'clock. • • • I called him over and introduced him to Hans Haupt and to Herbert Haupt the son; and told him that they had bought this car, put $10 deposit, and would drop in the following day and pay the balance. He said it looked like a good order, looked very good. • • • Q. Was the signature of Hans Haupt placed there? (On the order) • • • A. That is right. • • • Q. How long did the defendant, Hans Haupt, and Herbert Haupt remain in your place of business that night? A. I venture to say they were there about an hour and a half. • • • Q. In reference to this financial statement, did you state you took a financial statement from him? A. Yes. Q. That information was given to you by whom? A. That was given to me by Hans Haupt. • • • Q. Were there any references given? • • • business associates and friends • • • of Hans Haupt." "Was there any contract executed. A. Well, the usual finance contract. The notes, as you might call them, terms. We refer to it as a contract. That was for the Finance Company. Q. When was that executed? • • ? A. The first night. Q. Why signed it? A. Well, Hans Haupt signed that. • • • Q. Why paid the money on this 1941 Pontiac coupe on the first night (June 23). A. Hans Haupt. Q. How much did he pay? A. He paid as near as I remember, $405. Q. The first night? A. No, $10 down on the first night. Q. But, he, himself, then gave you the name Hans Max Haupt, and no other name? A. He gave me Hans Max Haupt, and I wrote that on the

companied the said enemy Herbert Haupt to the Warner Motor Sales, 958 Diversey Parkway, Chicago, Illinois, to complete
1864 the arrangements for the purchase of an automobile for the said enemy with the intent and purpose of assisting said enemy in carrying out his mission as an agent of the German Reich, as aforesaid."

Two F. B. I. agents who were covering the actions of the Haupts testified to seeing the father and son leave the Haupt residence and drive to the Warner Motor Sales Company on June 24, remain there awhile, and then they saw Herbert drive away from the auto company in a Pontiac coupe. Mr. Haupt had
1865 driven them to the auto company in a Plymouth car. The testimony of these two agents is outlined below.[16]

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financial statement. Q. But no other name? A. No other name. Q. And he introduced his boy as being Herbert Haupt? A. Herbert."

Phillip Newell Vinson, Government Witness.

"Q. Calling your attention to the early evening of June 23, Tuesday * * *, 1942, were you in your place of business on that evening? A. Yes, I returned from supper about 7 or 7:30. * * * Mr. Vincent Farrell, salesman, was there with two customers. Q. Subsequently after your arrival there, did you transact some business with those two customers? A. Yes, I did." (Identified photograph of Herbert Haupt.) (Identified Hans Haupt in courtroom.) "Q. Now, will you tell us just what took place on that evening, the first evening? A. * * * Mr. Farrell asked me if I can accept a deal on the 1941 Pontiac * * * for $1,045. * * * That was the selling price. * * * there was a slight additional charge that should have been put on the car to make a complete deal on the figures * * *. Mr. Farrell asked whether he could accept the deal on those figures, and I said, 'Yes, I would.' He said, 'I would like to have you meet the gentlemen.' And he took me over and introduced Mr. Herbert Haupt and Mr. Hans Haupt; they were the purchasers of the car, and they gave him a $10 deposit, and a credit statement. Q. Just a minute. Do you know who purchased the car? A. Yes, Hans Haupt. * * * There was no transaction made with me regarding the car. It was made with the salesman. Q. Were there any documents signed that evening? Yes, sir. Q. Did you handle it? A. Yes, sir. Q. Did you talk to them about it? A. Yes. Q. Did you talk to them about it? A. Yes. * * * (identifying document) It is a preliminary bill of sale. Q. Was that signed there that night? A. Yes, that was. Q. Was that in your presence? A. Yes. Q. And who signed it? A. Mr. Hans Haupt. Q. And do you know who put down the money; how much money was put down that evening? A. Ten dollars. Q. Who made the $10 deposit? A. Mr. Hans Haupt made the deposit. * * * Q. Now, was there a credit statement or credit memorandum taken that night? A. Yes, there was. * * * Q. In whose presence was the credit statement taken that night? * * * in your presence? A. It was. Q. Who signed that credit statement? A. Hans Haupt. Q. And whose references were given for that credit statement? A. They were Hans Haupt's. * * * The mortgage was signed, and the financial statement was taken and turned over by the salesman to me * * *" (evening of 23rd).

[16] Pennel V. Robe, F. B. I. Agent.

"Q. Calling your attention to Wednesday, June 24, 1942, were you in the vicinity of 2234 North Fremont Street, at approximately 6:00 P. M.? A. Yes, sir * * * I saw Herbert Haupt and Mr. Haupt come out of the residence at 2234 North Fremont * * * They both entered the Plymouth automobile with Mr. Haupt driving and they drove to the Warner Motor Sales * * *. This was on Wednesday, June 24th, that correct? A. Yes, sir. * * * Q. How long were they in the Warner Motor Sales? A. Approximately thirty minutes. Q. Calling your attention to approximately 6:30 P. M., what, if anything did you see? A. I saw Herbert Haupt leave the Warner Motor sales, driving the 1941 Pontiac coupe." "Q. Was that the same car that they had, that Hans Haupt had driven to that Motor Sales or a different car? A. It was a different car."

James C. Berg, formerly an F. B. I. Agent.

"Q. What did these two individuals (Hans and Herbert, whom he saw coming out of Haupt Home at 7 in the evening) do, if anything? A. Both individuals got into a car that was parked in front of 2234 North Fremont. * * * Then they left the residence there, drove to Warner Motor Sales, * * * they went into the sales room, both of the individuals * * * Q. Now, calling your attention to about 5:30 that afternoon, June 24, 1942, did you notice anyone coming in or going out of 2234 North Fremont with another elderly man (identifying Hans Haupt in the court room) * * *. Q. What did these two individuals do * * * Both individuals got into a car * * * Then they left the residence there, drove to Warner Motor Sales * * * they went into the salesroom, both of the individuals * * * Q. Which one did you see later? A. I saw Herbert Haupt. * * * He was driving south * * * in a Pontiac coupe * * * Q. How long after he

Overt Act No. 16. The next overt act of the indictment, submitted to the jury, was:

"Said Hans Max Haupt on or about the 24th day of June 1942, while at the Warner Motor Sales, 958 Diversey Parkway, Chicago, Illinois, made a further payment in cash toward the purchase of an automobile for said enemy Herbert Haupt and completed arrangements for the purchase of said automobile and did purchase said automobile for said enemy Herbert Haupt with the intent and for the purpose of assisting said enemy Herbert Haupt in carrying out his mission as an agent of the German Reich, as aforesaid."

The salesman and the general manager of the auto company were the same two witnesses to the car transactions on the second day, June 24th. The salesman handled the transaction, the general manager saw them come in, he received the money
1866 paid, saw Mr. Hans Haupt's name on the note, and saw the invoice that evening. In detail this evidence is given in the margin."

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entered the Warner Motor Sales, did you see him in this Pontiac car you described? A. Approximately twenty, twenty five minutes later." (He followed the Pontiac back to the Haupt home.)

" Vincent Christopher Farrell, Government Witness.

"Q. Did Hans Haupt and Herbert Haupt come into your place of business at a later time than the one you have described? A. They came in the following afternoon and brought in $405 in fives, tens, and twenties, and it was about three fifty dollar bills in there. (June 24). * * * Q. They were in there about the purchase of the automobile, is that correct? A. That is right * * * Well, that day, of course, they answered the usual financial—They gave the usual finance notes, of course. Q. Who signed them? A. Hans Haupt. * * * Q. What did they amount to, do you know, the total? * * * A. It is close of $630 * * * Q. Was there any contract executed? A. Well, the usual finance contract. * * * Q. When was that executed? * * * A. The first night. (June 23). Q. And was there money paid the following night? A. The following evening they came in and he paid $405. Q. By he you mean whom? A. Hans Haupt. * * * Q. Was Mr. Vinson there at that time, too? A. He was there, yes. * * * "And that $405 was the amount you stated Hans Haupt paid at that sales agency on June 24th, 1942, is that correct? Yes, that is right." "Q. And was that car delivered? A. That car was delivered the following day. He made the payment of what I have there, $405, it was made on the 24th."

Phillip Newell Vinson, Government Witness.

"Q. Well now, calling your attention to the next evening on the 24th of June, 1942, were you present in the salesroom on that occasion? A. I was, yes. Q. Will you tell us what happened on that evening? Q. Who was there? * * * Did you ever at any time see Hans Haupt or Herbert Haupt there the following evening, the 24th? A. Not that evening, no. Q. You say the 24th you did not see Hans Haupt and Herbert Haupt there? A. No. (following testimony shows witness was in error on this testimony) Q. Do you recall testifying at the last trial? A. Yes. Do you recall these questions being asked you, and you making these answers: 'Question: Calling your attention to the next day, the 24th of June, 1942, did you see either Hans Haupt or Herbert Haupt there that evening? Answer: Yes, I did.' 'Question: And where did you see them?' Answer: I saw them in the office together. 'Question: They came in there together, did they? Answer: That is right. 'Question: What, if any, conversation did you have with them at that time? 'Answer: None whatsoever. 'Question: Did you see them come in? 'Answer: Yes, sir. 'Question: Did you receipt for money that they had put on a down payment? 'Answer: We did. 'Q. Do you recall those questions and answers? A. I do. I was mixed up in my story. I did not talk to them. I saw them. I saw them come in and I was mixed up when I said I didn't speak to them. I saw them come in I was there at the time. * * * Q. And you said on that occasion you didn't talk to them yourself? A. No. Q. Did you receive the money that had been put down? A. I did. Q. On that evening? A. Yes. * * * Q. Whose name was on that note? A. It was Hans Haupt. * * * Q. Did you see the invoice that was made on that evening, June the 24th, with reference to the purchase of this car? A. I did. * * * Q. And was Mr. Farrell there that evening? A. Yes, sir, he was there. * * * Q. Mr. Vinson, in the first statement on the stand, you said you did not see them come in, then you later corrected that. A. That is correct, I misunderstood. I did not speak to them. I saw them both there. I saw them when they came in the second time."

Overt Act No. 17. This act, charging harboring on June 23, reads:

"Said Hans Max Haupt, on or about June 23, 1942, har-
1867 bored and sheltered the said enemy Herbert Haupt at the home of Hans Max Haupt, 2234 N. Fremont Street, Chicago, Illinois, well knowing that the said enemy was an agent of the Government of the German Reich in the United States to commit sabotage, act as a spy and an enemy agent and perform other services for said Government as aforesaid, all with the intent and for the purpose of assisting said enemy Herbert Haupt in carrying out his mission as an agent of the Government of the German Reich as aforesaid."

This overt act was proved by two witnesses who saw the father and son come into the apartment—these witnesses were actually in the home of defendant. Four other witnesses, F. B. I. agents, gave evidence of entry into the apartment building, and exit therefrom after lengthy intervals, of the defendant and his son.[18]

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[18] Mrs. Gerda Saure, Witness for Government.

"Q. * * * how long did you remain in there in the living room with Herbert Haupt in the Haupt home at 2234 N. Fremont St., * * * A. About two or two and a half hours." Herbert had gone out to meet her and she had come in so the defendant went out and got Herbert, and they came back together.

Gustave Zermer, Government witness.

"Now, calling your attention to the evening of June 23, 1942, that would be Tuesday evening, were you in the Haupt home on that evening? A. Yes, sir. * * * Q. How long did you remain with Mrs. Haupt before Hans Haupt or Herbert Haupt came back? * * * And did they come in separately or together? A. They were together. Q. And did they come into the apartment there, also? A. Yes, sir." Then tells of the finances coming to the apartment. "Q. And where did they go? A. They were in the kitchen eating supper. Mrs. Haupt had supper ready and she was waiting for them. * * * Q. When you say 'They ate first,' who do you mean? A. The three. Q. Who? Mr. Haupt, Mrs. Haupt and Herbert Haupt." Then recites about Herbert and his finances going into the parlor. * * * "What was said in the front room about an automobile? A. Mr. Haupt bought an automobile, and that was all. She asked him the price * * * Hans, who was there, he commenced talking, and he said to Mrs. Haupt he bought a machine." "Mr. Haupt asked me if I got a room for Herbert in my house, and I said, 'No, I got a room for me alone then what do you want a room for?' * * * Q. Did you ask why he wanted Herbert to get a room at your place? A. They got just one bedroom, see and they don't want to lay down in the front room." * * * Then tried refreshing the witness' memory from testimony at last trial." "Question: Were you asked this question at that time and did you make this answer: 'That he was afraid for Herbert to remain in his apartment at 2234 North Fremont Street.' Did you tell that to the FBI * * * Answer: Yes. Q. Was it true? A. Yes * * * Q. So Hans Haupt told you that night that he was afraid to have Herbert around the house, is not that true? A. Yes, sir." * * * On cross examination tells of Hans and Herbert Haupt coming to the apartment together * * * Testified on re-direct examination that Herbert and Hans came in the apartment. Says they went right into the kitchen and had supper. Defendant and Herbert were in the apartment. They were eating supper.

Edward C. Dixon, FBI Agent.

He saw father and son go into the building (Haupt home) at ten of nine, and son come out at 10:15.

John A. Lynch, FBI Agent.

Testified to having seen Herbert come out of Haupt residence at 12:30 P. M., re-enter it at 5:15. "At six o'clock I observed Hans * * * and Mrs. Haupt and Herbert * * * emerge from the residence * * * (Haupt home) and enter the Plymouth automobile * * *". Mr. Haupt and Herbert then went to Warner Motor Sales. "Then they (Hans and Herbert) proceeded to 2234 North Fremont Street where they both entered * * * It was approximately 8:35 or 8:40. * * * At about 10:15 P. M. I saw the lights of the Plymouth automobile go on and then saw Herbert * * * driving south on Fremont Street."

Peter P. Schneider, FBI Agent.

"Q. * * * calling your attention to June 23, 1942 * * * where did the individual (Herbert Haupt) go * * * A. He walked to the vicinity of 2234 North Fremont Street * * * At 8 P. M. I observed Herbert Haupt and Mr. Haupt and Mrs. Haupt leave 2234 North Fremont Street * * * They came out the front entrance * * * entered a Plymouth automobile * * * A. From this they returned to 2234 North Fremont. * * * At that time North Herbert

1868 Overt Act No. 20. This overt act charged the harboring and sheltering of Herbert Haupt, in substantially the same language as Overt Act No. 17, just quoted, except that said act concerned June 24, 1942.

The proof on this overt act was the testimony of four F. B. I. agents who related the times they saw the defendant and
1869 Herbert entering and leaving the premises of the Haupt residence, and also the testimony of the landlady who saw the mother and son outside the building, walking away from the building.[19]

Haupt and Mr. Haupt entered the building at 2234 North Fremont. * * * Approximately 10:15 P. M. Herbert Haupt and a young lady left 2234 North Fremont. * * * A. That Plymouth automobile returned to 2234 North Fremont. * * * At that time Herbert Haupt entered the front entrance of the building at 2234 North Fremont. * * * Q. And then both of them after going into some tavern or something for about five or ten minutes, went home, is that right, to Mr. Haupt's home, to 2234 North Fremont Street? A. Correct. Q. And that was somewhere around 8:30 or so? * * * A. 8:50 P. M. * * * I saw him leave at 10:15 P. M. * * *"

Marvin W. Lewis, FBI Agent.

"Q. * * * did you * * * arrive in the vicinity of 2234 North Fremont Street * * * about 10 o'clock on June 23rd. * * * A. Yes, I did. * * * 10 P. M. Q. Now, did you observe anything in the vicinity of 2234 North Fremont Street approximately at that time? A. Approximately 10:15 P. M. * * * I observed an automobile coming south on Fremont Street * * *. Q. After the young lady left the car, did you continue to follow the car in which Herbert Haupt was in? A. Yes, we did. * * * It went to 2234 North Fremont Street. * * * Herbert Haupt got out of the car and entered that particular address." "He went through the iron gate, which was at the very entrance to the property and up on the porch, in through the front door." * * * At the time the automobile was parked in front of 2234, there were no lights on the third floor, and a few minutes after Herbert Haupt entered that particular building lights did appear on the third floor (the Haupt apartment) * * *" "Q. Now, about what time did the lights go out? A. I would say about 12:40 A. M."

Mrs. Saure called as witness for defendant.

Te's of visiting at Haupt apartment Tuesday evening, June 23rd. She asked where Herbert was and was told he had gone out to meet her. "Mr. Haupt went out and said he would see if he could locate him, and tell him I was there, which he did then they both came back together."

Barbara Klucyzk (landlady).

"A. Now, later on during that week did you see Herbert Haupt around the house there? A. Only a couple of times. Q. When was the next time? * * * A. I saw him go away once with a taxi. * * * Q. After that did you see him on any other occasion during that week? A. Yes. It was on Wednesday noon * * * around eleven or twelve * * * Q. Where were you at that time? A. In our apartment. * * * In the front room. * * * Q. Was he alone * * * A. With his mother * * * They were walking south * * *."

John A. Lynch, F. B. I. Agent.

"At 12:30 A. M. I observed Herbert Haupt park the Plymouth automobile in front of the residence at 2234 North Fremont Street, then enter the residence at that address. * * * Well, I saw him enter a sidewalk, pass the iron gate which is in front of the residence, proceed up the steps to the porch. From the position that I was in I could not see the door. Is that the front porch you are speaking of? A. That is right. (Identifies Herbert Haupt's picture) * * * Is there any other place that a person can go on that porch, after he goes up the stairs? I mean, is there any other way to go around the side of the building after you get on the porch? A. No, there is not, only one door. * * * Q. Now, calling your attention to approximately 7:00 o'clock in the morning of the 24th; I think you said just a moment ago you saw Herbert Haupt go in at 12:30 A. M.? A. That is right. Q. At 7:00 o'clock in the morning on June 24, 1942, will you tell us what, if anything you observed? A. At 7:00 o'clock I saw Mr. Max Haupt emerge in his work clothes and enter the Plymouth (emerged from residence) * * * At 1:00 P. M. on June 24 I noticed Herbert Haupt emerge from 2234 North Fremont Street, stand in front of the residence for about a minute, at which time a taxicab drove up and he entered the taxicab * * *."

Pennel V. Robe, F. B. I. Agent.

"Q. Calling your attention to Wednesday, June 24, 1942, were you in the vicinity of 2234 North Fremont Street, at approximately 6:00? A. Yes, sir. Q. Will you tell us what you observed at that time? A. I saw Herbert Haupt and Mr. Haupt come out of the residence at 2234 North Fremont Street."

James C. Berg, former F. B. I. Agent.

"Q. Now, calling your attention to about 5:30 of that afternoon, June 24, 1942, did you notice anyone coming in or going out of 2234 North Fremont (Haupt home)? A. Yes, sir. * * * A. Young man walked in to the 2234 North Fremont. * * * Herbert Haupt. * * * Q. Did you later see that young man

1870 Overt Act No. 21. This overt act alleges "harboring" of the agent of the German Reich in the same language as the other harboring counts, except it concerns June 25, 1942. As to this day ten F. B. I. agents testified they saw Herbert enter and/or leave the Haupt building; one other person also so testified. They testified that an existing light in the Haupt apartment was extinguished a few minutes after entry into the building; also, that upon exiting, Herbert was wearing different garb than when he entered.[20]

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again, Herbert Haupt? A. About 6 o'clock the same day, in the evening. * * * He came out with another elderly man (identified defendant). * * * He (Herbert) got out of the car, went up to the house at 2234 North Fremont. * * * Q. What time did he go up the front steps? A. Probably around 6:35 or 6:40. * * * Approximately ten minutes later, the same day, he came out of the house, entered his car and drove away. * * *" (Agent followed him to several other places.) "A. He returned home around 9:15 in the evening." (Herbert walked around car and went back in and drove away.)

Frank E. Meech, F. B. I. Agent, Government Witness.

"* * * calling your attention to June 24th, 1942, were you in the neighborhood of 2234 North Fremont about 7 o'clock in the morning of that day? A. Yes. * * * at approximately 7:05 in the morning, Hans Max Haupt emerged from the residence 2234 North Fremont, entered a Plymouth automobile * * * At approximately 1 o'clock in the afternoon Herbert Haupt emerged from the address 2234 North Fremont and entered (a cab) * * *."

[20] Carl Eggert, Government witness.

"Q. Now, you say he came out of the house? A. That is right (Herbert came out). * * * Now then what happened, Mr. Eggert? A. Then a minute or two later Hans came out of the house. * * *"

Richard W. Axtell, Government witness, F. B. I. Agent.

"Calling your attention to the 25th of June, 1942, at approximately 12 P. M. were you in the vicinity (of the Haupt home) * * *? A. Yes, I was. * * * Q What did you see him do at that time, about 12:00 P. M.? A. * * * after he parked the car I saw him go into the residence of 2234 North Fremont. Q. That was after midnight? A. Just about midnight of the 25th. Q. Did you observe the condition of the lights at that time in the third floor apartment? A. Yes, sir, I did. * * * Shortly, after Herbert went into that building * * * I saw the lights on the third floor go off—that is, they were extinguished."

John A. Lynch, F. B. I. Agent, Government witness.

"Q. * * * calling your attention to June 25, 1942, * * * were you in the vicinity of 2234 North Fremont Street at about 4:20 P. M.? A. Yes, sir, I was. * * * At that time I observed Herbert Haupt drive north on Fremont Street in a Pontiac coupe, park in front of 2234 North Fremont Street and enter the residence there."

Pennel V. Robe, F. B. I. Agent.

"Q. What did you observe at approximately 12:55 A. M. June 25? That would be early morning? A. I observed Herbert Haupt enter the residence at 2234 North Fremont Street."

"Q. At approximately 4:20 P. M. on that same day what did you see? A. I observed Herbert Haupt entering the residence at 2234 North Fremont Street. Q. That was on June 25, 1942, is that correct? A. Yes, sir."

James C. Berg, F. B. I. Agent, Government Witness.

"He (Herbert) proceeded to 2234 North Fremont (at 12:45 on the early morning of the 25th). Q. Did he walk into the building? A. He was walking up the steps, yes, sir."

Phillip C. Dunne, Government Witness, F. B. I. Agent.

"Q. Calling your attention to the early morning of June 25, 1942 at approximately 1 A. M., did you see (Herbert Haupt). * * * Yes, sir, I did. * * * At that time, Herbert Haupt drove up from the north on Fremont in his automobile, parked the car, got out * * * went around the front of the car, entered through the iron gate, up the stairs of the residence at 2234 North Fremont and entered the residence at 2234 North Fremont. * * * Q. What happened after Herbert Haupt entered the house, as far as the lights are concerned? A. After Herbert Haupt entered the house at 2234 North Fremont, the lights in the front room of the third floor went on. Q. Did the remain on? A. For approximately fifteen minutes. * * * Then they went out. * * *"

James C. Conerty, F. B. I. Agent, Government Witness.

"Q. * * * calling your attention to June 25, 1942, were you in the vicinity of 2234 North Fremont Street? A. I was. * * * Q. * * * did you observe anything with reference to 2234 North Fremont Street? A. At that time I saw Hans Max Haupt, and another unknown individual leave the address at 2234 North Fremont * * * and proceed to the said Plymouth automobile * * * Q. Now, did you observe anything a little later after 1:10 that morning? A. At about 7:15 that morning, I observed Herbert Haupt come out of the same entrance at 2234 North Fremont and walk to a Pontiac coupe that was parked in front of that address. * * * A. He entered the car about ten minutes later, Hans Max Haupt and this other unknown individual, and drove south on Fremont and they were im-

1871 Overt Act No. 22. This is another "harboring" charge, and covers June 26, 1942. Its language is similar to the foregoing. On this charge, four F. B. I. agents testified to seeing Herbert Haupt enter, or leave the premises of the
1872 defendant's home, that he had different clothes on upon leaving than when entering; one testified he saw him on the stoop of the apartment building.[21]

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mediately followed by Herbert Haupt in his Pontiac coupe. * * * Q. Now, calling your attention to about 4:20 P. M. on June 25, 1942, did you observe anything with reference to 2234 North Fremont Street * * * A. At about that time I observed Herbert Haupt drive up in a Pontiac and park the car and get out and go to the front entrance of that address. Q. Did you observe anything with reference to 2234 North Fremont at about 6:45 on June 25th? A. At about that time I observed Herbert Haupt leave the address 2234 North Fremont by the front entrance, get into a Pontiac coupe and drive south on Fremont. Q. Did you observe how Herbert Haupt was dressed at that time? A. At that time he had apparently made a change of clothing, because when he entered at 4:20, he was wearing a light tan suit and when he came out at 6:45 he had a gray-green sweater and cap."

Elmer Fletcher, F. B. I. Agent, Government Witness, recalled

"Q. Now, on June 25th, 1942, were you in the neighborhood of 2234 North Fremont Street? A. Yes, I was. * * * I observed Herbert Haupt drive up in front of the address, 2234 North Fremont Street and enter this address. * * * Approximately 1 A. M. Q. Did you see him go up the steps, front entrance? A. Yes, I did. * * * I was here approximately at 4:20 P. M. in the afterno * * * I observed Herbert Haupt enter the residence 2234 North Fremont." (Gave much testimony about following Herbert around in the Pontiac car, to various cafes and hotels.)

Frank F. Meech, F. B. I. Agent, Government Witness.

"Now, calling your attention to Thursday, June 25, 1942, were you in the neighborhood of 2234 North Fremont? A. Yes, I was. * * * at approximately 4:20 in the afternoon Herbert Haupt drove up in the Pontiac car, it is the address, 2234 North Fremont Street. * * * He went up the steps onto the porch where he disappeared."

Marvin W. Lewis, F. B. I. Agent, Government Witness.

"Q. Now calling your attention to June 25th, 1942, did you again that evening observe Herbert Haupt? A. Yes, I did. * * * Approximately 12, midnight. * * * I observed him driving his automobile, a Pontiac automobile which he parked about two houses north on 2234 on the west side of the street. I saw him get out of the car * * * walk over to the same gate, and enter the building, 2234 * * * He went up the front steps through the front door. * * * Before he went in the house, the lights on the third floor were out. A few minutes after he entered, the lights were on. After about ten minutes, the lights were out."

George D. O'Connor, F. B. I. Agent.

"He got into an automobile, drove to 2234 North Fremont where he got out of the car and went into the building at that address. * * * It was about midnight of the evening of June 25, 1942 (testified the lights on the third floor went out shortly after Herbert got home)."

James C. Conerty, F. B. I. Agent, Government Witness.

"Q. Now, calling your attention to June 26, Friday, 1942, at about 5 o'clock in the afternoon, were you in the vicinity of 2234 North Fremont? A. yes, sir, I was. * * * I was at 2231 North Fremont, on the first floor apartment, which is directly across the street from 2234 North Fremont. * * * what, if anything, did you observe with reference to 2234 North Fremont Street? A. I observed Hans Max Haupt drive up in the Plymouth automobile, park the car and enter the residence * * * At about 6 o'clock the same day, I observed Herbert Haupt drive up in his Pontiac coupe, park the car at the same address, by the same entrance. * * * At about 7:15 I observed Max Haupt leave the residence by the front entrance; at that time he was alone. He went to his automobile * * * and drove south * * * At about 8 o'clock I observed Herbert Haupt and his mother, * * * leave the residence by the front entrance, get into the Pontiac coupe and drive south * * *."

Elmer Fletcher, F. B. I. Agent, Government Witness, recalled.

"He proceeded to the address 2234 North Fremont * * * Q. In this same black Pontiac car he arrived in? A. Yes, sir. * * * He entered this address. * * *."

Marvin W. Lewis, F. B. I. Agent, Government Witness.

"Q. Now, that morning of the 26th, you were still observing the house, did you again see Herbert Haupt? A. Yes, I did. * * * It was 9 o'clock A. M. * * * when he went the evening before, that is, on the 25th, at midnight he wore a green sweater, tan gabardine trousers and a pair of brown and white shoes, white and green colored Panama hat with rim turned down. Q. Do you recall how he was dressed when he came out from 2234 on the morning of June the 26th? A. Yes, I do. He was wearing a tan gabardine suit, that is a coat and jacket, with a pair of brown and white shoes." * * * "Now, you state that at about 9 o'clock in the morning, June 26th, that you saw Herbert Haupt leave 2234 North Fremont? A. I saw him leave that particular address, yes, sir. * * * Q. Now, did you later return to that particular building, 2231 North Fremont? A. Yes, I did at approxi

Overt Act No. 23. The final act submitted to the jury is also a "harboring" accusation, in similar terms as the other harboring charges, except that it deals with the day
1873 of June 27, 1942. Five F. B. I. agents testified to the entering and leaving of the building by Herbert Haupt.[2]

It would seem inexcusable to set forth the lengthy statement of witnesses which supports or tends to support the numerous so-called overt acts. We feel like apologizing therefor.
1874 Yet, on the theory advanced by the defendant's counsel we have found no way to avoid it. The errors assigned deal not only with the legal sufficiency of the acts and deeds of the defendant but also with the sufficiency of the evidence to establish or make a jury question as to whether two witnesses proved all of them and by direct testimony. He also assails the instructions given by

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mately 8 P. M. of June the 26th." "Q. Now going back to June 26, 1942, did you see any one enter that home on that day you recognized other than Herbert Haupt? A. Yes, I did. At 11:00 P. M. I observed Hans Haupt enter that house. * * *"

James F. Hynes, F. B. I. Agent, Government Witness.

"Q. Calling your attention to June 26, 1942, approximately at 12:15 in the morning, did you * * * go down to 2234 North Fremont Street * * * At about 8:00 A. M. June 26th I observed Herbert Haupt on the stoop of 2234 North Fremont, come out on to the sidewalk." (Herbert got into Pontiac and drove away.)

George D. O'Connor, F. B. I. Agent, Government Witness.

"* * * that morning (June 26) at seven o'clock approximately I saw Hans Haupt come out of the building * * * Q. Did you later see Herbert Haupt? A. Yes, he came out about nine o'clock. * * * Out of the building at 2234 North Fremont."

John A. Lynch, F. B. I., Government Witness.

"Q. Will you tell us what you observed at 1:50 A. M. on June 27, 1942? A. At 1:50 A. M. or thereabouts, approximately, I observed Herbert Haupt park the Pontiac coupe in front of the residence at 2234 North Fremont Street; then get out of the car. * * * Herbert Haupt entered the residence of 2234 North Fremont * * * Q. Now, calling your attention to 9:05 A. M., or approximately thereabouts on that same morning, June 27, 1942, what, if anything, did you observe? A. At that time I observed Herbert Haupt emerge from his residence at 2234 North Fremont Street and enter the Pontiac coupe and proceed south * * *"

Fennel V. Robe, F. B. I. Agent, Government Witness.

"Q. Calling your attention to Saturday, June 27, 1942, at approximately 1:50 A. M., what, if anything, did you observe? A. I observed Herbert Haupt entering the residence at 2234 North Fremont Street. Q. At approximately 9:05 A. M., what, if anything, did you observe? A. I observed Herbert Haupt leave the residence at 2234 North Fremont Street."

Elmer Fletcher, F. B. I. Agent, Government Witness.

"Now, calling your attention to about 8:20 A. M. Saturday, June 27th, were you in the vicinity of 2234 North Fremont? A. Yes, I was. * * * I observed Herbert Haupt come from this residence (about 9 o'clock A. M.) enter his car * * *"

Marvin W. Lewis, F. B. I. Agent, Government Witness.

"Q. Did you see Herbert Haupt at any time that evening or early morning hour of the next day? A. Yes, I did. At 1:50 A. M., the same Pontiac automobile was parked directly in front of 2234, and I saw Herbert Haupt get out of that automobile, and enter the building at 2234 * * * He entered directly through the front door, up the porch, into the front door. * * * The lights were out at the time he entered the building; they came on in a few minutes after he entered the building, and they remained on for approximately ten minutes, at which time they were put out. Q. Did you have an opportunity to observe what clothes he was wearing at the time? * * * Yes. At the time he came in he was still wearing the suit, that is, the coat and pants of the same color, and gabardine. * * * Q. Now, calling your attention to 9 o'clock of the morning of the same day, did you again see Herbert Haupt? A. Yes, I did. * * * He came out of the front door of the building, 2234 North Fremont Street. * * *"

Frank F. Meech, F. B. I. Agent, Government Witness.

"Q. Now, calling your attention to Saturday, June 27th, 1942, at approximately 1:50 A. M., were you in the neighborhood of 2234 North Fremont at that time? A. Yes, I was. * * * I observed Herbert Haupt drive up in front of 2234 North Fremont * * * Q. By entering the address, did you see him go up on the steps of the porch? A. That is correct, go up on the steps of the porch, yes. Q. Now, calling your attention to about 9:05 A. M., on that same date, the 27th, were you in the neighborhood of 2234 North Fremont? A. Yes, I was * * * Well, approximately 9:05 I saw Herbert Haupt come off the porch at the address 2234 North Fremont, come down the steps out to a Pontiac automobile which he entered and drove south * * *"

the court to the jury in respect to said overt acts and the necessity of proving all of them.

SUFFICIENCY OF PROOF OF OVERT ACTS, BY TWO WITNESSES

(A) The Overt Acts as to Harboring. Overt Acts 12, 17, and 20–23, charged harboring each of the successive days from June 22 to June 27. As to several of these days there was simply the testimony of F. B. I. agents that they saw the saboteur, Herbert, and his father leaving and going into the front entrance of the six-apartment building wherein the Haupts lived. Counsel for defendant strenuously argues that there is no "direct" proof that Herbert was actually in the Haupt apartment, the F. B. I. testimony being circumstantial proof.

This argument is drawn from the language in the Cramer case: "While to prove giving of aid and comfort would require the prosecution to show actions and deeds, if the Constitution stopped there, such acts could be inferred from circumstantial evidence. This the framers thought would not do. So they added what in effect is a command that the overt acts must be established by direct evidence, and the direct testimony must be that of two witnesses instead of one."

In our opinion the testimony of persons who saw the son enter the front entrance which led to the front three apartments of the six apartment building, on the third floor of which the defendant father lived, saw lights either go on or off in the third floor apartment soon after entry of the persons, saw the son emerge in different garments than that in which he entered that same entrance some time before; saw the son leave many hours after having entered—is direct testimony that said son was being quartered in the father's home. To call such evidence circumstantial, rather than direct, is the extreme of tenuity. Such was not the protection
intended to be accorded by the Constitution to one charged
1875 with treason, when it required the testimony of two witnesses to the same overt act. It is worthy of passing note that it is the decision in the Cramer case, not the definition found in the Constitution, which adds the necessity of "*direct* evidence." We must, however, and do follow the court holding.

SUFFICIENCY OF PROOF AS TO OTHER OVERT ACTS

(B) The Automobile Transactions. Overt Acts 13 to 16 covered the automobile transactions. Two of the acts charged accompanying by the defendant, of the son, to the auto sales agency. Two charged the signing of the financial statement, making initial payment, and the further payment on the car.

The proof of accompanying is also by F. B. I. agents, as well as

of the two men in the agency. There can be no doubt that two witnesses testified to the father's going with the son to the agency; nor that he signed the statement, nor that he handed over the cash.

Counsel for defendant argues that there were not two witnesses to the financial aspects of the transaction, that the deal was handled by the salesman, and the manager came in later, or was at some distance from the parties at the time of the negotiations. A careful reading of the testimony of Mr. Vinson, discloses that he was cognizant of the whole transaction, had met the father and son; had been consulted by the salesman as to whether the price were satisfactory (having been reduced by the salesman); he talked with them about the preliminary bill of sale; it was signed in his presence by the father; the credit statement was made in his presence. As to the next evening (June 24) the manager had no conversation with the father and son, but he saw them come in, he stated "we" receipted for the down payment, and he received the money which had been put down, saw Hans Haupt's name on the note, and saw the invoice.

To discount testimony of the manager as above outlined as not direct support for the charge of the overt act that "Hans * * * while at the Warner Motor Sales * * * made a further payment in cash towards the purchase of an automobile for said enemy Herbert Haupt and completed arrangements for the purchase of said automobile and did purchase said automobile for said enemy Herbert Haupt", would seem to us ludicrous—were this not the serious charge of treason.

576 SUFFICIENCY OF PROOF AS TO THIRD GROUP OF OVERT ACTS, TO-WIT 10 AND 11

(C) Accompanying Herbert to Regain Employment in Simpson Optical C6. These Acts charged the father with "accompanying" the son to the homes of two persons influential in the company for the purpose of assisting Herbert in seeking re-employment. There is no doubt that the father did accompany the son to these homes, that he was present when the son asked for re-employment, sometimes volunteered information as to the son's whereabouts in the interval since he left the employ of the company, or that the son had now registered for the draft, etc. This was established by the testimony of two witnesses. There can be no doubt the father's (and mother's) presence lent an air of respectability (and moral support) to the son's application—gave the impression that here was a returned traveller now ready to renounce farflung adventure (digging for gold) and settle down to the serious business of making a living.

LEGAL SUFFICIENCY OF THE OVERT ACTS CHARGED

Introductory. The Cramer case supplies many markers of the legal attributes of a treasonable overt act. Alas, not all of them contribute to clarity of understanding. Still they are our guides. We quote therefrom:

"Of course the overt acts of aid and comfort must be intentional as distinguished from merely negligent or undesigned ones. * * * he must intend to betray his country by means of the act. * * *

"Actions of the accused are set in time and place in many relationships. Environment illuminates the meaning of acts, as context does that of words. What a man is up to may be clear from considering his bare acts by themselves; often it is made clear when we know the reciprocity and sequence of his acts with those others, the interchange between him and another, the give and take of the situation."

"From duly proven overt acts of aid and comfort to the enemy in their setting, it may well be that the natural and reasonable inference of intention to betray will be warranted.

"The very minimum function that an overt act must per-
1877 form in a treason prosecution is that it show sufficient action by the accused, in its setting, to sustain a finding that the accused actually gave aid and comfort to the enemy.

"It may be that in some cases the overt acts, sufficient to prove giving of aid and comfort, will fall short of showing intent to betray and that questions will then be raised as to permissible methods of proof that we do not reach in this case. But in this and some cases we have cited where the sufficiency of the overt acts has been challenged because they were colorless as to intent, we are persuaded the reason intent was left in question was that the acts were really indecisive as giving of aid and comfort. When we deal with acts that are trivial and commonplace and hence are doubtful as to whether they gave aid and comfort to the enemy, we are most put to it to find in other evidence a treacherous intent."

All of the acts charged in this indictment could have been innocent acts. Parents house their adult children; they buy them cars; they help them seek employment. But such children are rarely enemies. Yet even performance of the accused acts for an enemy-child might not establish treason. The setting for the overt acts, i. e., the father's knowledge of the enemy-son's mission with specific instructions to acquire a car to effectuate the mission's objects, to gain reemployment to obtain knowledge of the Norden bomb sight and plans of the Simpson Company—it is this setting which transforms the innocent into the sinister.

We believe the defendant is laboring under one fundamental misapprehension of the Cramer case—that we may not take ex-

traneous evidence, allegedly by one witness alone, to breathe traitorous design into seemingly innocuous acts. He relies on this statement taken from the Cramer opinion:

"Every act, movement, deed, and word of the defendant charged to constitute treason must be supported by the testimony of two witnesses. The two-witness principle is to interdict imputation of *incriminating acts* to the accused by circumstantial evidence or by the testimony of a single witness. The prosecution can not rely on evidence which does not meet the constitutional test for overt acts to create any inference that the accused did *other acts* or did *something more than was shown in the overt act*, in 1878 order to make a giving of aid and comfort to the enemy." [Latter italics ours.]

We do not construe this quotation to deny the right to prove by extraneous evidence the intent with which the very acts charged were done. Quite shortly after the above quotation, the court says:

"It may be that in some cases the overt acts, sufficient to prove giving of aid and comfort, will fall short of showing intent to betray and that questions will then be raised as to permissible methods of proof that we do not reach in this case. But in this and some cases we have cited where the sufficiency of the overt acts has been challenged because they were colorless as to intent, we are persuaded the reason intent was left in question was that the acts were really indecisive as a giving of aid and comfort. When we deal with acts that are trivial and commonplace and hence are doubtful as to whether they give aid and comfort to the enemy, we are most put to it to find in other evidence a treacherous intent."

We think the earlier language in the same opinion is of prime importance in construing the legal requisites of proof of intent to betray. The court says:

"Bearing in mind that the constitutional requirement in effect is one of direct rather than circumstantial evidence, we must give it a reasonable effect in the light of its purpose both to preserve the offense and to protect citizens from its abuse. What is designed in the mind of an accused never is susceptible of proof by direct testimony. If we were to hold that the disloyal and treacherous intention must be proved by the direct testimony of two witnesses, it would be to hold that it is never provable. It seems obvious that adherence to the enemy, in the sense of a disloyal state of mind, cannot be, and is not required to be proved, by deposition of two witnesses.

"Since intent must be inferred from conduct of some sort, we think it is permissible to draw usual reasonable inferences as to

intent from the overt acts. The law of treason, like the law of lesser crimes, assumes every man to intend the natural consequences which one standing in his circumstances and
1879 possessing his knowledge would reasonably expect to result from his acts. Proof that a citizen did give aid and comfort to any enemy may well be in the circumstance sufficient evidence that he adhered to that enemy and intended and purposed to strike at his own country."

Of great importance is also this statement:

"It is only overt acts by the accused which the Constitution explicitly requires to be proved by the testimony of two witnesses. It does not make other common law evidence inadmissible nor deny its inherent powers of persuasion. It does not forbid judging by the usual process by which the significance of conduct often will be determined by facts which are not acts. Actions of the accused are set in time and place in many relationships. Environment illuminates the meaning of acts, as context does that of words. What a man is up to may be clear from considering his bare acts by themselves; often it is made clear when we know the reciprocity and sequence of his acts with those of others, the interchange between him and another, the give and take of the situation."

In the Cramer case, the court held the act of "tippling in a tavern" to be a harmless act, of no possible benefit to the enemy, but even possibly a detriment to the illegal venture. No evidence was shown of any aid or comfort given at that tavern meeting—not even that Cramer had paid for the food or drink.

The Court thought, on the other hand, an overt act charging the taking a large sum of money from the German agent was not such a "usual amenity of social intercourse" and was of such fibre as could constitute an overt act in a treason case. They noted that Cramer had given the German agents no "shelter, nothing that can be called sustenance or supplies, and there is no evidence that he gave them encouragement or counsel, or even paid for their drinks." They said, "Meeting with Cramer in public drinking places to tipple and trifle was no part of the saboteurs' mission and did not advance it. It may well have been a digression which jeopardized its success."

The overt acts here involved were harboring an enemy, buying a car, accompanying to seek reemployment, the first an essential to any accomplishment of the saboteurs' mission, the latter
1880 two were directly ordered by the saboteur's superior. Their seeming harmlessness therefore is dispelled when they are viewed in their "setting," their "environment." During the week the son was with the father, little else was done (except visits to restaurants, cinema, taverns, and friends).

Harboring and sheltering overt acts. There can be little doubt that on the respective dates alleged, the son, Herbert, stayed overnight in his father's home, ate meals there, changed clothes there, and lived as a regular member of the family.

Nor can we entertain much doubt that the harboring and sheltering, with the treasonous intent, constitute adhering to the enemy and giving aid and comfort. A saboteur must be lodged, and he must be lodged in a safe place if his mission is to be effected. One witness testified that the father sought lodging for the son at another place, also a "mailing address" at this witness' rooming house, but did not succeed. It was essential for the son to be quartered in Chicago if he were to gain reemployment with the Simpson Optical Company, in accordance with his directions.

We are clearly of the opinion that an overt act which showed the knowing harboring of a saboteur was an act which met the requirements of the Constitutional definition.

The Overt Acts repurchase of automobile. It is defendent's argument that the purchase of the automobile was an innocent act in its entirety—the father had been using the son's Plymouth car during his absence, using it hard, and upon the son's return immediately went about to replace it with another car. While this explanation has plausibility, it does not comport with the facts actually disclosed.

One of the instructions Herbert received was to obtain a car to facilitate transportation of the explosives from the beach in Florida, for delivery to the various points of sabotage, and as a means of travel for the members of the expedition. The purchase of the car was arranged for within a couple of days of Herbert's return—showing urgency of his duty. The old Plymouth car had not become obsolete, in fact it was used by the Haupt family during the week of surveillance. There would not have been the rush to buy the new car, without the pressing need for it.

This son had just returned from a year's absence, yet
1881 he and the father immediately went out and arranged for the purchase of a car on one day and picked it up the next—paying for it in cash, which included several $50 bills. The father purchased this car in his own name, signed the financial statement, gave references. It is most probable it was the enemy-son's money, yet the father purchased the car. The father drove him there, took part in all the negotiations.

We do not feel this, a harmless innocent act, incapable of being an overt act in a treason charge, although an ordinary act in every day life. Here it was an essential link in a deadly chain. It was an indispensable instrumentality to the effectuation of the mission of the saboteur group.

Defendant stresses the negligibility of the father's driving the son ("accompanying") him to the motor sales place as an overt act. True, it may not be considered as of gross proportion in the entire scheme of things, but it was essential, and the father's driving the son there facilitated the accomplishment of the purchase.

SUFFICIENCY OF OVERT ACT RE SEEKING REEMPLOYMENT

Again we have an act which assuredly is a commonplace one, i. e., seeking reemployment upon return from a trip. It's also natural to return to the place of prior employment. Again the sinister aspect is revealed when it is shown Herbert was the one member of the gang of saboteurs instructed to return to his old job to obtain secrets of the Norden bomb sight manufactured by the Simpson Optical Company, and to obtain plans of the Plant lay out for incendiary purposes. He was not merely seeking reemployment. What is more, his father knew it. The father's accompanying him to the homes of the foremen, participating in the conversation (though not himself asking that his son be reemployed) was helping the son to carry out his instructions. Of course, the son could have sought reemployment alone—but it was not to the Company that he went—he went to the homes of the foremen, in the evening, and it was natural for the innocent outward appearances, that his father and mother go with him. These foremen were acquaintances of the family. The father's presence gave weight to Herbert's application. It also made for better concealment of Herbert's wicked objective.

Evidence of traitorous intent. "* * * to make treason the defendant not only must intend to act, but he must intend
1882 to betray his country by means of the act" (325 U. S. 1, 31).

It is on this point that defendant leans heavily—his acts were alleged those of a devoted father, harboring an erring son, solely because of paternal solicitude. He claims there is no "two witness" direct proof of any contrary possibility.

Again the Cramer opinion must be our guide. It says:

"What is designed in the mind of an accused never is susceptible of proof by direct testimony. If we were to hold that the disloyal and treacherous intention must be proved by the direct testimony of two witnesses, it would be to hold that it is never provable."

Inasmuch as it is obvious that direct proof of a man's thoughts is well-nigh impossible, we rely on his utterances, as well as his acts, for a disclosure of intention. In the instant case the utter-

ances are many, to different persons, at divers times. We have set them forth at length in the margin.[22a] In essence they

[22a] Barbara Kluczyk, Government Witness.

"Do you recall a conversation with Hans Haupt on any subject about that time? (June, 1941.) A. Well, he told us the boy was going to Germany." Q. For the purpose of refreshing your memory, did Hans Haupt at any time tell you that his son liked Germany better than the United States and wanted to go back and fight for the Germans? A. I think he said that. * * *"

Carl Eggert, Government Witness.

"A. Hans told me he wanted to tell me something, that I should go with him in that back room; and I go in there * * * Hans Haupt said, 'Carl' he said, 'I got $900 my own money'—You can do me a favor and keep it for me. Then I am afraid now the F. B. I. comes in my home and takes it away.' * * * Well, I said, 'If it is your money, I keep it for you.' * * * I saw Hans Haupt * * * half an hour * * * later in my house. * * * (He) Just said again 'Here is $900.' * * * Please keep it for me.'"

William H. McDonald, Government Witness, U. S. Marshal.

Talked to Hans Haupt, August 5, 1942. Hans said he wanted to talk to an F. B. I. agent, and McDonald called them.

Earl Hirsch, Government Witness, former F. B. I. Agent.

"I introduced myself to Hans Haupt, showed him the credentials I had, and told him that I understood that he wanted to see an agent of the F. B. I. * * * Hans Haupt said, "That he told me Wergin and his wife were responsible for his son's condition, that is, being apprehended, but he said he was very mad at them and wanted to testify against them in court. * * * He then said that on Saturday night, July (sic., mean June) 20th, that his wife Erna Haupt, himself and Herbert Haupt went over to the Wergin home * * * and at that time in the presence of all present, Herbie Haupt told a complete story of his trip to Mexico. How he contacted the German Consul there and how he obtained passage to Japan, and in Japan they were met by the German and Japanese Consul; thereafter they ran through the British Blockade on a boat and landed in France. Hans Haupt then said Herbie Haupt related that he was in an Intelligence School. * * * and that he had a huge sum of money to use in connection with that over here. Hans Haupt then said Otto Wergin said 'he wasn't a dummy, and that he knew the mission Herbie Haupt was on.' He also said 'He served in a similar capacity during the last World War.' * * * Hans Haupt then said that Wergin offered his services to Herbie Haupt in his activities in this country, because he could use some of the money Herbie Haupt had. Hans Haupt then related on Friday night, June 19th, he and his wife went over to the Froehling home and while at the Froehling home, Herbie Haupt related (same story) * * * and his return to the United States on a German submarine. * * * Wergin and his wife were so insistent on Herbie going forward with these plans, he wanted to testify against him in court.

Pennel V. Robe, Government Witness, F. B. I. Agent.

Gives same story as Hirsch, above, including defendant's saying that Herbert told them he went to Germany and returned to this country by submarine. "Herbie Haupt said that his duties in this country was that of a contact man."

William Max Schroeder, Government Witness, co-worker of defendant.

"We talked about the time (1936) we were fighting in the war in the trenches; then he brought up about Hitler. * * * He was in back of Hitler. * * * He said he would like to have a man like Hitler here to rule this country. * * *. After the meeting he comes to me, told me I should not talk against that, that they send money to Germany. Hans comes to me, told me I should shame myself. * * *"

Mrs. Louis Fishman, Government Witness, Employer of Defendant.

"Hans Haupt said that if we entered war against Germany we would have a revolution in this country like they had there after the last war; that we have German organizations back here that would take our armories over, our electrical companies, our telephone companies; that the same think would happen to us as happened in Norway and France, that we would be taken from within by Fifth Column activities."

John Majerczak, Government Witness, Convict.

"He says when he seen Herbie (at a relative's home in June, 1942) he was scared; he was scared because the F. B. I. agents and the Selective Board * * * and Herbie agreed to go with him * * * and his dad was scared. * * * Herbie, he told me—that Herbie did not * * * could not stay home long, but he wanted to stay home until he got his car, after he got a car he would not stay home at all. * * * Mr. Haupt told us how Herbie came on a submarine to the United States from Germany; that he came with some fellows that landed in Florida; and when they landed in Florida that he went with another fellow to Chicago. * * * He said he was scared of Herbie because Herbie was here for no good reason * * * He said that he told how Herbie told him that he landed with a group of men in a rubber raft—that they changed clothes and hid the explosives * * * in the sand * * * during that conversation he told about the money. And later during his conversation he told how his son gave him money in this home, and later his son asked him to purchase an automobile for him * * * he gave him one thousand dollars out of a money belt to buy the car for him * * * And Mr. Haupt told how he hid this money, underneath a rug so that Herbie gave him a sum of money out of a money belt to buy a

1883 are this: Hans in June, 1941 said his son liked Germany better than the United States and wanted to go back and fight for the Germans. In June of 1942, Hans gave a friend eighteen fifty dollar bills "of my own money" to keep for him because he was afraid the F. B. I. would come and take it (the F. B. I. took it from the recipient). After defendant was taken into custody he asked the marshal if he might speak to the F. B. I. and two agents went to see him. They were Agents Hirsch
1884 and Robe. Defendant told them that Wergin was responsible for his son's and his apprehension, and he wanted to testify in the trial against him. Defendant told them the Haupts had gone to the Wergin home on June 20th and Herbert told a complete story of his trip; defendant told them Herbert was in the Intelligence School and "that he had a huge sum of money to use in connection with that over here." Wergin
1885 said he wasn't a "dummy," inferring he knew the purpose of Herbert's trip, because he had a similar duty in World War I. Wergin offered to help Herbert because he wanted some of the money.

Defendant told Agent Hirsch, the three Haupts went to the Froehling home on June 19th and Herbert told the same story, and told of coming back on a German submarine. He also told the Agent that on June 27th when Herbert had not shown up all day, the Haupts, Wergins, and Froehlings had a meeting in the

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car. • • • He says Herbie wanted an automobile to get around in, and that he purchased an automobile for him from the money Herbie gave him to purchase this car."

Carl Hamby, Government Witness, Convict.

"He said that his son had given him some money. • • • He said it was German money. • • • He said his son left home (1941) and the first time he heard from him was in Mexico, and he said the second time he heard from him he was in Tokyo, Japan; then he did not hear from him for some time then and then he received a letter from his son where he was in Germany. • • • he said Herbie Haupt told him that he came back on a German submarine. He said he did not believe it at first but the son convinced him that he had come back on a German submarine and he explained to Mr. Haupt the purpose, his purpose of coming back to this country, that he came back here to sabotage, to blow up the ammunition dumps, and many factories. • • • obstruct traffic, railroad trains, everything possible, and he named one specific place, the Pressed Steel Company" "and he asked me—(Mr. Haupt) I have to come to you to help me. I will need help.' Mr. Haupt told him he would assist him as much as he possibly could • • • He gave Mr. Haupt some money, a large sum of money and Mr. Haupt took this money and hid it in his home under the rug and Herbie Haupt gave him some other money to hold for him, personal money, and he also gave him money to buy an automobile, and • • • • • • after he was • • • graduated from the sabotage school • • • the German government gave him money • • • put them on a submarine and sent them to this country. • • • I asked Mr. Haupt why he did not turn his son in and he said that his son was his own flesh and blood and after all he was helping the fatherland. • • • Mr. Haupt told me that his son wanted a job in the Optical Company; that he was trying to get a job there; that his son wanted some plans which this factory—out of this factory, regarding some kind of a sight, but he was supposed to turn those plans over to Germany • • • Q. Did he say that the boy told him this? A. Yes, sir." "He said that Herbert Haupt talked to him, told him most of these things at their first meeting at Mr. Froehling's home; and he asked if those people, his friends and relatives and his father to help him." Cross-examination, "he said he would cooperate."

Hans Eric Poppe, Government Witness.

"He told me (in 1939) that if war would break out with the United States and Germany, he would never permit his boy to join the American Army. He would send him to Mexico and from there he could go to Germany and join the Air Force. He told me at the same time that if war broke out, that if the country would take him in the Army, he would crawl over to the enemy lines and tell them our position."

Haupt home and decided on a uniform statement they would all make, if apprehended, namely, that they knew nothing of Herbert's activities except that he had been to Mexico. F. B. I. Agent Robe testified to the same as Agent Hirsch, adding that defendant said Herbert had said he was to be a "contact man" in this country.

A coworker of defendant in 1936 stated that Hans told him that he, the witness, was "not a good German" and he "should shame" himself for not contributing to the German cause; he lauded Hitler.

An employer of defendant and his wife testified to conversations wherein defendant said:

"If we entered war against Germany we would have a revolution in this country like they had there after the last war; that we have German organizations back here that would take our armories over, our electrical companies, our telephone companies; that the same thing would happen to us as happened in Norway and France, that we would be taken from within by Fifth Column activities."

He again lauded Hitler and his regime.

Additional overwhelming evidence comes from two convicts who were jail-mates of Haupt in the County Jail after apprehension in 1942. They are Hamby and Majerczak. Defendant told these jail-mates that Herbert had related how he had landed in this country, how they hid the explosives; that Herbert gave him money; that Herbert asked him to purchase an automobile and gave him $1,000 out of the money belt to buy it with; Herbert also gave him thousands of dollars which he hid; defendant told the witnesses he purchased the automobile for the son, he lauded Hitler.

We have not overlooked the warning which appeared in the opinion of the majority of the Supreme Court in the Cramer case, to wit:

1886 "To use prewar expressions of opposition to entering a war to convict of treason during the war is a dangerous procedure at best. The same may be said about the inference of disloyal attitude created by showing that he refused to buy bonds and closed the door in the salesman's face. Another class of evidence consists of admissions to agents of the Federal Bureau of Investigation. They are, of course, not 'confessions in open court.' The Government does not contend and could not well contend that admissions made out of court, if otherwise admissible, can supply a deficiency in *proof of the overt act* itself." [Italics ours.]

In the instant case the prewar utterances are not half so damning as the postwar ones. The prewar utterances show a very strong pro-Nazi adulation. The postwar utterances show a knowledge of Herbert's mission here, and defendant's cooperation to effectuate it.

Defendant stresses the flimsiness of the convicts' testimony. It is admittedly not the weightiest of evidence. If true, it revealed defendant as an indiscreet person. Why should the jury believe it? If defendant had been of good sense, why would he join his son who chose to serve Germany on so important a war mission? Reconciliation of these statements, conclusively established, with ordinary horse sense and good judgment is impossible. Rather it characterizes the action of one who was drunk with Hitler Naziism and aflame with the delusion that he belonged to a superior people whose mission was to conquer the world, and his son was playing a leading role in that conquest. True, outside of an overweaning self-confidence he had little to support his belief in membership in a superior nation. But the jury was weighing the story of the witnesses and the defendant. The latter was throwing bricks at these witnesses, discrediting them, and pointing to their prison record. Perhaps the jury believed defendant was living in a glass house.

The jury, however, not the court, was the judge of the credibility of all the witnesses.

There is substantiation of the convicts' testimony in the voluntarily-told story by defendant to the F. B. I. agents, when, in vengeance, he sought to ensure the conviction of the person he believed had betrayed his son and himself. The agents' testimony concerned confessions not made in open court, and therefore
1887 was not admissible to prove the overt acts. They were properly received, however, to prove the intent with which those overt acts were committed.

We quote from the testimony of the witness Hamby.[23]

In the summer of 1939 defendant told a co-worker that he would never permit his boy to join the American Army. He would send him to Mexico and from there he could go to Germany and join the Air Force. He stated, "* * * he told me at the same time that if war broke out, that if the country would take him in the Army, he would crawl over the enemy lines and tell them our position. * * * he told me he had no feeling for the United States

[23] "Herbert Haupt told him that he came back on a German submarine. He said he did not believe it at first but the son convinced him that he had come back on a German submarine and he explained to Mr. Haupt the purpose, his purpose of coming back to this country, that he came back here to sabotage, to blow up the ammunition dumps, and many factories * * *, obstruct traffic, * * * everything possible, and he named one specific place, the Pressed Steel Company. * * * and he asked me * * * I have to come to you to help me. I will need help. Mr. Haupt told me he would assist him as much as he possibly could. * * * He gave Mr. Haupt some money, a large sum of money * * * and he also gave him money to buy an automobile, and Mr. Haupt told me that his son told him he did not think it advisable that he should buy an automobile and Mr. Haupt agreed that it was not advisable * * * so Mr. Haupt bought the car himself for Herbert * * * Herbert Haupt told his dad that he needed a car to get around, to do the work that he was supposed to do when he came back to this country. * * * Mr. Haupt told me that his son wanted a job in the Optical Company; * * * that his son wanted some plans which this factory * * * out of this factory, regarding some kind of a sight, but he was supposed to turn those plans over to Germany * * *."

at all. His feelings were only for Germany, and he wished Hitler would come over here * * *."

Reading the evidence, with the care which a treason charge demands, we are left free of all doubt as to the sufficiency of the evidence of criminal intent to support the verdict. It persuasively supports the contention that the overt acts here were done with a knowledge and with an intent to betray this country in time of war, and to aid the enemy, Germany. True, defendant was a scared man (the F. B. I. having investigated the Haupts before Herbert's return), but his heart was still strong for the German cause, even after the declaration of war. He could not refrain from aiding his son in his mission, knowingly and treasonously. The jury could hardly have found other than the defendant was proud his son was a German saboteur, bent on uncovering important war secrets and destroying war plants which were essential to our successful conduct of the war.

1888 Such action by Government counsel in offering all this evidence, we think, would be better commended than criticized.

In a case where criminal intent is so vital in the jury's determination of guilt, as in a treason case, it would seem to be highly desirable that the jury receive all the enlightenment obtainable. In fact, it must occur to a reader of the record before us that defendant would, if innocent, have acted more wisely had he taken the witness stand and explained or denied, if he could make denial, all the damaging testimony of the Government witnesses. Of course, he was not required to take the witness stand. He could, as he did, stand mute, and no unfavorable comment upon such fact could be made to the jury by the prosecutor. Determination of the course to be pursued depends largely on the facts and the state of the evidence produced by the Government. One thing is certain. The Government should not be condemned for offering all the relevant, competent evidence.

Counsel charges duplicity in the indictment and lack of particularity. In general these criticisms were covered in this court's opinion on the former appeal (136 F. 2d 661) and decided adversely to the defendant, upon an indictment sufficiently similar to the instant one to make the ruling there made, here applicable. We adhere to the ruling in that case on this point.

Sufficiency of the Indictment. Defendant argues the indictment does not state the crime of treason because the alleged overt acts are legally insufficient. We reject the contention for reasons heretofore given. Suffice it to say that the so-called "commonplace insignificant" overt acts charged when read "in their setting" are neither commonplace nor insignificant.

Error is also assigned because certain "withdrawn" overt acts

such as 1, 4, and 8, which charged simply "conferring" with the enemy agent remained physically in the documentary indictment and were taken to the jury room. Evidence had been introduced which showed that such conferences had been in fact held at the various homes of the Froehlings, Wergins, and Haupts, so their recital in the overt acts could not have been prejudicial. This evidence was received as a part "of the setting."

It has been generally believed that the prosecutor occupies a position somewhat judicial in character; that he is inter-
1889 ested in presenting all the facts, those unfavorable to his case, as well as favorable. He does not perform as a skillful fencer matching wits with an able seaman especially skilled in defensive tactics in criminal cases. In other words, he is charged with the duty to fully disclose and fairly appraise all of the facts.

Defendant's criticism is that the prosecutor here held nothing back but disclosed all of defendant's acts and deeds, even though some of them were not established by two witnesses. Such one witness testimony was illuminating and material on the issue of intent rather than as proof of overt acts.

Denial of Bill of Particulars. Defendant complains of the denial of a bill of particulars which sought to inform him of the manner in which his accompanying his son to the homes of the former supervisory employers aided the son in securing employment, and in what manner and by what acts he harbored and sheltered his son, and how he aided his son's mission by purchasing a car. A mere statement of these requests shows their insubstantiality. There was no vagueness in the indictment's allegation which needed clarification by particularization—no surprise could be practiced on the defendant in proving the allegations.

Denial of Motion to Quash Indictment

Defendant argues that the trial court erred in refusing to quash the instant indictment inasmuch as the former indictment for treason, conviction under which was reversed by this court and the cause remanded, was still pending.

Neither side has cited authority to support its contention.

An examination of the two indictments makes it clear that they cover the same acts of treason, although the defendants were not the same. Nor were the overt acts. We have no doubt that should the instant conviction stand, an attempted retrial, upon the former indictment, would be subject to a plea of double jeopardy.

Our conclusion is that the grand jury may return several indictments against the accused grounded on the same criminal act.[24]

[24] Thompson v. U. S., 202 F. 401; Thompson v. State, 61 Neb. 209, 85 N. W. 62

The pendency of an indictment against the accused where defendant has not been placed in jeopardy upon it does not prevent
1890 a later valid indictment against him.[25] Generally speaking, the pendency of a previous indictment is not ground for quashing a second indictment,[26] although it is discretionary with the court to require the Government to elect upon which indictment it will proceed.[27] A few of the cases bearing on the subject are collected in the margin.[28] Especial attention is called to U. S. v. Ball, 163 U. S. 662, 672.

The practice is not commended in the ordinary case.

Errors in Admission of Evidence

Prewar Utterances. Error is charged for admission of pre-war utterances, one of which was made six years prior to the time of the offense, and the others about three or fewer years before. These utterances were strong pro-German statements. They have been detailed above. We believe such utterances were receivable as background evidence bearing on the intent with which the overt acts were committed.

As early as 1 U. S. (33) the question of the admissibility of words to enlighten as to motive, was discussed. There the Court said, "But, as it appears that the prisoner was actually with the enemy at another time, words indicating his intention to join them are proper testimony, to explain the motives upon which that intention was afterwards carried into effect." (Respublica v. Malin.) (See also U. S. v. Pelley, 132 F. 2d 170; U. S. v. Burr, 25 Fed. Cases, No. 14,693; American Jurisprudence, Vol. 20, "Evidence," Sec. 340.)

Admission of such evidence may be somewhat dangerous, but it may nevertheless be essential. In the instant case the trial court took care to guard the danger of misuse of such testimony by instructions both at the time the testimony was admitted, and at final submission of the case. He admonished the jury that such statements were not a basis for the charge of treason, that
1891 defendant had the legal right to freedom of expression. Such statements were to be considered only in determining what defendant's intent may have been after the declaration of war, in committing (if he did) any of the overt acts submitted to them.

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[25] Thompson v. U. S., supra; Cabaniss v. State, 8 Ga. App. 129, 68 S. E. 849; Hurst v. State, 11 Ga. App. 754, 76 S. E. 78; Dutton v. State, 5 Ind. 533; Peters v. Koepke, 156 Ind. 35, 59 N. E. 33; State v. Lindsay, 86 Vt. 201, 84 Atl. 612.
[26] 15 Am. Jur. 38 Criminal Law, Sec. 139.
[27] 13 Am. Jur. 38, Criminal Law, Sections 133-135.
[28] U. S. v. Ball, 163 U. S. 662, 672; U. S. v. Neverson, 12 D. C. 152; Irwin v. State, 117 Ga. 706, 45 S. E. 48; Blyew v. Com., 91 Ky. 200, 15 S. W. 356; Pride v. State, 125 Ga. 750, 54 S. E. 688; Gannon v. People, 127 Ill. 507, 21 N. E. 525; Corpus Juris Secundum, Criminal Law, Sec. 241; State v. Messervey, 105 S. C. 254, 89 S. E. 662; U. S. v. Herbert, 26 Fed. Cas. No. 15,354, Nash v. State, 73 Ark. 399, 84 S. W. 497.

Treason can not be committed without treasonous intent, and intent being the subjective fact it is, statements of the accused are of real importance in the proof.

Evidence re Exhibits. Complaint is made of the introduction of pictures of the boxes of ammunition which were cached on the beach in Florida, of the saboteurs' caps, Herbert's ring with the Nazi crest, etc., as evidence not connected up with either Herbert or the defendant. The testimony of Burger, a member of the other saboteur party which landed in New York, connected it with Herbert. He had seen the exhibits in Germany when the two expeditions were being outfitted. The testimony of the F. B. I. agents, Connelly and Pryor, also tied it to Herbert.

As against the defendant this evidence was receivable to show the treason to which Herbert was a party. It was necessary for the Government to show treason and also that defendant was a party to said treason. This evidence tended to show treason. The burden was on the Government to show (a) a treasonable enterprise and (b) defendant was a party to it. This evidence was part of the proof tending to establish (a). And the crime of treason is not child's play. It's a most serious matter. In all its naked wickedness, it is shocking. To offer evidence that the actors used high power explosives to destroy war industries, to kill large bodies of workers, to obtain war secrets of great value to the enemy, was no doubt highly impressive and persuasive with a jury of loyal American citizens. The complaint of counsel, however, should not be directed to the inadmissibility of such evidence. It should be directed to the action of defendant and his son. As against each of them such evidence would not have been harmful, had Hans and Herbert not been actors playing a leading role in the perpetration of said treason.

Errors re Instructions. One instruction complained of (No. 8) charged in substance that the jury was not to find the defendant guilty unless they believed him guilty beyond a reasonable doubt. Defendant contends the constitutional "two witness" requirement of proof should have been inserted. Had there been no precise instruction on the absolute necessity of two witness proof
1892 in order to have conviction, there would be more merit in defendant's assignment of error. Each paragraph of an instruction deals with a different aspect of the law and if all the requirements were to be incorporated in each paragraph confusion, not clarity, would result.

We find no error in instruction No. 9 defining "reasonable doubt." It couched in layman terms the degree of doubt barring conviction.

Instruction No. 13 is said to give a convict's testimony a build-up rather than cautionary. We do not so read this instruction,

which states that proof of conviction of a felony is evidence tending to impeach the witness' credibility, but the fact that a witness has been convicted does not mean that he can not tell the truth.

Instruction No. 26 consisted in part of reading some of the indictment, including the reading of overt acts not submitted to the jury, and thereby an unfavorable impression was left with the jury of many extraneous illegal activities of the defendant. The court admonished the jury to consider only the submitted overt acts, and, to consider the evidence adduced in re the unsubmitted overt acts, in the determination of the intent with which defendant did the submitted overt acts. The jury was sufficiently apprised that the indictment was but the pleading. It had to be proven. It was not evidence.

The same answer to the objection to Instruction 36 holds good as to No. 8, above.

Instructions 39, 40, and 44, defining an "overt act" might not stand the test of the definition in the Cramer case as to what constitutes an overt act in the crime of treason, but we can see no prejudicial error therein. The duty of the jury was to determine guilt under the submitted overt acts. The court determined the legal sufficiency of all overt acts relied on for conviction. In this case, the overt acts submitted to the jury measured up to the correct definition of a legally sufficient overt act.

Counsel contended that the sentence in Instruction 47, "The Court is submitting to your consideration as possible overt acts of treason, the following alleged acts * * *," is not a neutral statement of submission, but indicates to the jury those acts have been sufficiently proved. We do not so construe that language.

As to instruction No. 49, wherein the trial court charged:

"49. Since the law requires that there shall be no
1893 conviction of treason unless there are two direct witnesses to the same overt act, all the other alleged overt acts charged in this indictment are hereby withdrawn from your consideration as overt acts of treason, for even if you believe beyond a reasonable doubt they were performed, they may not in themselves be made the basis of a conviction under the Constitution. However, if you believe beyond a reasonable doubt that the defendant did actually perform any of these other alleged overt acts which were not proven to the degree required by the Constitution, you may consider any such act in determining the question of the intent with which the defendant may have performed, if you find beyond a reasonable doubt he did perform, any of the above alleged overt acts submitted to your consideration and not withdrawn, and which other possible overt acts, not withdrawn, you find from all of the evidence are proven beyond a reasonable doubt by two direct witnesses to the same overt act."

The objection was that it was error to send to the jury the unsubmitted counts, for any purpose, in view of the "two-witness" rule. We have discussed above our interpretation of the Cramer case which specifically states the "two-witness" rule is applicable to the overt act aspect of treason, and not to intent; therefore it was permissible to consider the evidence under the unsubmitted counts if relevant to a determination of intent with which the submitted overt acts were done.

The most seriously argued objection to the charge arises out of instructions 50 and 51. In essence, these instructions told the jury that they were to find the defendant guilty if they found he performed any one of the treasonable overt acts submitted, to which acts two witnesses had testified. A plurality of overt acts was submitted. A general verdict was returned. The Cramer case (in footnote 45), 325 U. S. 1, 36, states a general verdict must be set aside "if any of the separable acts submitted was insufficient."

If it were not for the fact that our study of the evidence as summarized above supports the jury's verdict of guilt on any or all of the overt acts submitted, reversal would on this theory follow. We have reached the conclusion that each of the overt acts submitted to the jury was legally (or constitutionally) sufficient.

1894 It follows, we think, that if the jury was satisfied by the necessary quantum of proof and by two witnesses, that one or more of the submitted overt acts were proven, the crime was established.

Another phase of this question not argued, tends to support the validity of instructions 50 and 51.

Is the overt act an element of the crime?

In other words, the Constitution specifically defines the crime: "Treason against the United States shall consist only in levying war against them or in adhering to their enemies, giving them aid and comfort." After the definition of treason is given, there is added a provision as to the quantum of proof necessary to convict: "No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court." It calls for two witnesses to prove one of the acts committed by the defendant in the effectuation of the treason.

The definition of the crime, whether of treason or perjury, where also two witnesses were required, does not include as an element of the crime, the testimony of witnesses whose evidence established the crime so defined. Just as any two witnesses, if believed by a jury, will suffice, so will any one of the legally sufficient overt acts suffice, if proved by two witnesses, provided it is held that said overt act is not an element of the crime.

In the Cramer case the Court said, "The crime of treason con-

sists of two elements: adhering to the enemy; and rendering him aid and comfort." Inferentially this excludes the overt act as an element of the crime.

There seems to be good reason against its inclusion as an element of the crime. If it is an essential element then there would be as many treasons as there are overt acts. As one convicted of treason can give his life but once, there could be but one punishment, if the punishment be death. On the other hand, if acquitted on the first trial, the defendant could be tried times without number. For each overt act, if it be an essential element of the crime, makes for a separate and distinct crime. If the overt act be an essential element of the crime, then each overt act, being different, there would be no limit to the number of treason crimes a defendant could commit in a single day.

On the other hand, consistency appears in the argument that the second sentence of Article III, Section 3, the only
1895 one which mentions overt acts, is merely directed to the sufficiency of the proof of treason. It would be more logical to say that one treasonable enterprise exists although numerous overt acts in carrying it out may be shown. Not until one treasonable enterprise was ended, could a second treason begin.

On this theory there could be no criticism of either instruction 50 or 51, for obviously if the treason were committed and one of several overt acts were established, a case would be made out.

This view of the crime of treason does not relieve the Government of proving the two elements essential to the crime (a) adhering to the enemy, and (b) rendering the enemy aid and comfort. It is necessary to prove an act or a deed showing the traitor has passed from a state of mind, from the mental, to the doer stage.

Support for this line of reasoning may be found in many cases (Goode v. U. S., 159 U. S. 663; Clifton v. U. S., 4 How. 242; Powers v. U. S., 223 U. S. 303; Dunbar v. U. S., 156 U. S. 185; Evans v. U. S., 153 U. S. 584; Claassen v. U. S., 142 U. S. 140; Coffey v. U. S., 116 U. S. 427; Snyder v. U. S., 112 U. S. 216) where it is held that one good count in an indictment containing several counts will support conviction where a general verdict has been rendered.

It is, however, not necessary to sustain the judgment that we adopt this construction of the Constitutional provision although it is an inescapable conclusion. For all of the overt acts charged in the cases before us were legally sufficient and there being proof that defendant adhered to the enemy by giving aid and comfort, the crime was committed when and if any one legally sufficient overt act was found by the jury to be established.

As to instructions 53 and 54, in regard to intent, defendant complains of the phrase "before you can find the defendant guilty"

and the statement, "This does not mean, however, that you must find that the defendant went through any specific mental process as a result of which he was conscious of the specific thought 'I am going to commit treason.'" He cites the Cramer case statement that to "make treason the defendant not only must intend the act, but he must intend to betray his country by means of the act."

We think the contention is answered by a reading of the whole of the instruction, and by the language of the Cramer case.

1896 "Since intent must be inferred from conduct of some sort, we think it is permissible to draw usual reasonable inferences as to intent from the overt acts. The law of treason, like the law of lesser crimes, assumes every man to intend the natural consequences which one standing in his circumstances and possessing his knowledge would reasonably expect to result from his acts. Proof that a citizen did give aid and comfort to an enemy may well be in the circumstances sufficient evidence that he adhered to that enemy and intended and purposed to strike at his own country."

Exhaustion of Jury. The verdict is attacked because the jury deliberated 28 hours without sleep.

The case was one which necessitated extended deliberation by the jury. The trial was a long one and the issues, many. The indictment charged an offense which is the most serious which could be preferred against a citizen. The life of the defendant demanded full and careful consideration of the evidence, and the extended instructions of the trial judge impressively placed a heavy responsibility on each juror. More serious would be the criticism if the said jury had deliberated but a few hours and returned a verdict against the defendant.

The cases are many where the jury remained in deliberations 28 hours or more without sleep. Experience wisely leaves such matters to the discretion of the trial judge. We must reject defendant's argument in this respect. Hyde v. U. S., 225 U. S. 347, 383; Bernal v. U. S., 2141 F. 339, 342.

Illinois Statute on Harboring Member of Family. Error is assigned because the court refused to admit in evidence the Illinois Statute, Chap. 38, Par. 584, which provides that any person "not standing in the relation of * * * parent * * *" who harbors a felon shall be held as an accessory after the fact, and liable for punishment. Complaint is also made because the court failed to instruct as to this statute.

There was no error in the court's action. Treason is a Federal offense. A state criminal statute cannot exculpate a violator of the Federal criminal law. As a matter of fact, a parent merely harboring a son would not be guilty under the Federal treason statute. He must possess a treasonous intent—an intent to betray

his country by means of the act. The District Court so instructed the jury.

1897 Numerous other assignments of error* have been urged which we have duly and carefully considered. We think a separate, extended discussion of each one is unnecessary and unjustifiable. We do not find merit in any one of them. Each and every one has been considered and is rejected either because it is not well taken or because the charge is unsubstantiated by the record.

The judgment is affirmed.

KERNER, Circuit Judge, Concurring. I concur in affirming the judgment, but not in all that is said in the opinion.

Dissenting opinion

MAJOR, Circuit Judge, Dissenting. "But the basic law of treason in this country was framed by men who, as we have seen, were taught by experience and by history to fear abuse of the treason charge almost as much as they feared treason itself." Cramer v. United States, 325 U. S. 1, 21. Acting on such fear, treason was deliberately made a difficult crime to prove by providing in the Constitution: "No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act or on confession in open court." The opinion by which this judgment is to be affirmed is a striking illustration that the fear entertained by the makers of the Constitution was well founded. The reasoning of the opinion is in my judgment, so grievously and palpably erroneous that I find myself compelled to dissent. The opinion states that it is "unfortunate that the trial occurred before the decision in Cramer v. United States." Presumably this means that the trial court would have tried the case on a different theory if it had had the benefit of that decision. I doubt not that such would have been the case. In this connection, it can be said with equal propriety that it is even more unfortunate that the majority of this court in their zeal to affirm this conviction have been faced with the law of treason as announced in that decision.

Defendant was entitled to have the question of his guilt determined by a jury in accordance with the law and the Constitution pertaining to treason. As I view the matter, the function of this court is confined solely to the question as to whether his

1898 guilt was thus determined. If not, the judgment should be reversed, irrespective of any personal opinion we may entertain on that issue. Any other view amounts to usurpation of the province of the trial court and the jury. If this view be correct,

*Rejection of tendered instructions, rejection of evidence of Illinois statute, inflammatory argument of counsel, exhaustive period of deliberation of jury, reading of witnesses' testimony to jury after commencement of deliberations, verdict and sentence.

the conclusion to affirm receives little, if any, support from the voluminous recitals of the opinion designed to show that the defendant is guilty.

I shall therefore overlook numerous erroneous statements and innuendoes found in the opinion and come at once to a consideration of certain legal questions with which I take issue and which, in my judgment, require a reversal. These legal questions no doubt arise in the main from the fact that the case was tried and a conviction obtained upon a theory diametrically opposed to that on which the government seeks an affirmance in this court. The case was tried and the jury was instructed (instructions will be hereinafter discussed) on the theory that proof of one or more overt acts by the direct testimony of two witnesses was sufficient to authorize a conviction. In seeking an affirmance in this court, it is conceded by the government that such is not the law and that a reversal is required if there was a failure of proof as to any one of the overt acts submitted. While it is difficult to be certain on what theory the judgment is affirmed due to the inconsistent conclusions which are reached, it is my understanding that the majority embrace and affirm on each of these incompatible theories.

I shall therefore first show the theory upon which the case was presented to this court and later that upon which it was tried. Twelve overt acts were submitted to the jury. The judgment rests upon the jury's general verdict of guilty. No position was taken by the government in its original brief as to whether the judgment could be sustained in the event this court concluded there was a failure of proof as to one or more of such acts. During oral argument an inquiry was specifically directed to government counsel concerning such an eventuality and leave was granted to the parties to file a supplemental brief directed solely to this question, which brief was filed by the government October 26, 1945. In order to dissipate some of the fog created by the opinion, I quote from this supplemental brief:

"During the oral arguments in the above-entitled cause our attention was directed to the question of whether or not, if any
of the overt acts, either as alleged or proven, submitted to
1899 the jury as possible overt acts upon which it could base a
conviction for treason, were insufficient, it would be necessary for the court to reverse the conviction. We have therefore addressed ourselves to that problem, keeping in mind Instruction No. 51 (Bill of Exceptions 1591), by which instruction the jury were told:

"'It is not necessary for the Government to prove by two witnesses the performance of more than one of the submitted overt acts, providing, of course, the other elements of the alleged crime

are proven beyond a reasonable doubt as heretofore defined in these instructions.'

"It would seem from a review of the authorities, including Cramer v. United States, 65 S. Ct. 918, 89 L. Ed. Advanced Sheet No. 13, page 937, et seq., footnote 45; Stromberg v. California, 283 U. S. 359, 368; Williams v. North Carolina, 317 U. S. 287, 292; and Roth v. Swanson, 145 F. (2d) 262, 269 (C. C. A. 8), that the failure to prove or the insufficiency of any of the submitted overt acts would require a reversal of the conviction."

Certainly there can be no doubt but that the government after due deliberation with honesty and frankness conceded that a failure of proof as to one or more of the overt acts submitted would require a reversal. In fairness to the government, it should be stated that it was also urgently insisted, as had been done in the original brief, that all of the submitted acts were properly proven. Furthermore, as I understand, it was and is the government's contention that instruction 51, which embodies the theory on which the case was tried in the court below, was not prejudicial error because all of the submitted acts were adequately proven.

That the opinion recognizes the government's concession as sound and as the law of the case is also clear. The opinion states:

"Concededly there must be direct proof, by two witnesses, to each overt act, submitted to a jury, upon whose general verdict the sentence in a treason case is pronounced. There may be overt acts of legal sufficiency and established by the direct testimony of two witnesses, but the conviction will fall if the court sub-1900 mitted to the jury certain alleged overt acts which were charged in the indictment but which were either legally insufficient or not sufficiently established to present a jury question, by the direct testimony of two witnesses."

Also:

"The law being as announced in the Cramer case, it is our duty to carefully examine the long record here involved and determine if the requisite constitutional measure of proof was adduced by the Government. In performing this task, we have, as we read the respective witnesses' testimony, recorded the evidence relevant to any submitted overt act, to the said overt act to which it appertains. Because of the indispensability of such proof on one theory which has been advanced by government counsel, as to each overt act submitted we set forth such evidence and overt acts seriatim."

At this point I challenge the statement, "on one theory which has been advanced by government counsel." This at least implies that the government presented to this court both of these inconsistent theories as grounds for affirmance. Such is not the case.

This double-headed monstrosity was conceived in this court and not in the mind of government counsel.

At another point the opinion points out that the prosecution might have withdrawn several of the alleged overt acts charged in the indictment and made its conviction less vulnerable to attack. Unless the author of the opinion thought that proof of all the overt acts was required, how can it be said that a withdrawal of some of the acts would have made the government's position less vulnerable to attack? Also, the theory on which the case was tried did not require the exercise of such judgment on the part of either counsel for the government or the trial court. By that theory it was sufficient if only one of the overt acts submitted was properly proven.

Furthermore, the opinion sets forth each of the twelve overt acts and relates in detail all of the evidence found in the record, which it is thought proves each. If an affirmance of this judgment is to be had on the theory here advanced by the government, this would seem essential. If, on the other hand, the judgment is to be affirmed upon the theory on which the case was tried, the setting forth of this voluminous testimony is an idle and useless gesture.

1901 True, the author of the opinion appears to have been in some doubt as to the purpose of reciting all of the submitted overt acts, together with the proof relied on in support of each. Prior to so doing, the opinion states that it is for the purpose of determining "if the requisite constitutional method of proof was adduced by the government." After consuming some eighteen pages in detailing this testimony, it evidently was discovered that it was for some other purpose. The opinion states:

"It would seem inexcusable to set forth the lengthy statement of witnesses which supports or tends to support the numerous so-called overt acts. We feel like apologizing therefor. *Yet, on the theory advanced by the defendant's counsel we have found no way to avoid it.*" [Italics supplied.]

Whether the narration of this voluminous testimony was for the purpose of sustaining the government's theory, as stated at one point in the opinion, or whether it was for the purpose of disproving the defendant's theory, as stated at another point in the opinion, is really unimportant. The main point is that the effort was without purpose except in recognition that an affirmance could be had only upon adequate proof that each of the submitted overt acts had been proven.

Having shown that the majority (up to this point) proceed on the theory that the judgment can be sustained only by the direct testimony of two witnesses to each of the submitted overt acts, I now reach the first major premise with which I take issue. For

the purpose of such issue, I am willing to assume that the overt acts as alleged are legally sufficient, as the majority have found. In other words, if that were the only question involved, I would not dissent, notwithstanding the dubious propriety of such a holding in view of the Cramer case. Especially is this so as to the acts which charge that Herbert Haupt was harbored and sheltered in the home of his father (and mother). No claim is made and there is no proof that he was concealed in this home; on the other hand, the testimony indicates that he entered and departed therefrom the same as any son might be expected to do. There is proof that he was on one occasion furnished food to eat and a bed in which to sleep. Just how the action of his parents in this respect was of any assistance to the government of Germany or any harm to the United States is not easy to discern. I 1902 suppose in order to have escaped a charge of treason it would have been incumbent upon the parents to have slammed the door to their home in his face. Even this would not have been sufficient under the reasoning of the majority if perchance they had given him a sandwich to eat as he made his departure.

The opinion on its face, however, is so clearly wrong in its conclusion that all the submitted acts were properly proven that I pass to that question. As the opinion concedes, on this phase of the case a reversal is required if one or more of the acts are without sufficient support. I shall therefore direct my discussion only to acts 12, 17, 20, 21, 22, and 23, the so-called harboring acts. These acts are all in substantially the same phraseology except that each designates a different date. They each charge that on a certain date the defendant "harbored and sheltered the said enemy Herbert Haupt at the home of Hans Max Haupt, 2234 N. Fremont Street, Chicago, Illinois." The dates alleged are: in overt act 12, June 22, 1942, in overt act 17, June 23, 1942, and in overt acts 20 to 23, inclusive, June 24 to June 27 1942, inclusive. As heretofore stated, the majority opinion sets forth in detail the proof held to supply the requisite support for each act. For the purpose of my position, I think it may be safely assumed that the record has been carefully searched and all the testimony offered in support of each act properly and fully set forth.

At this point it is pertinent to observe that the entrance to 2234 N. Fremont Street, set forth in each of these acts and oftentimes referred to by the witnesses, is not the entrance to the apartment occupied by the Haupts but is the entrance to a 3-story apartment building, and that the home of the Haupts was the third floor apartment reached by a stairway which extended from the entrance of the apartment building to and by each of the other apartments, that is, one located on the first and the other on the

second floor.[1] In considering the testimony relied upon by the majority in support of these various overt acts, it should also be kept in mind that they are each separate and distinct, and in accordance with the constitutional mandate must be proven by the testimony of two witnesses to the same overt act or on confession in open court."

"Every act, movement, deed, and word of the defendant charged to constitute treason must be supported by the 1903 testimony of two witnesses." Cramer v. United States, supra, page 34. More than that: "The case of treason stands upon a peculiar ground; there the overt acts must, by statute, be specially laid in the indictment, and must be proved as laid. The very act, and mode of the act, must, therefore, be laid as it is intended to be proved." United States v. Gooding, 25 U. S. 292, 301.

It would serve no useful purpose and would unduly prolong this discussion to point out the insufficiency of the proof as to each of these harboring overt acts. The evidence speaks for itself. I assert with confidence that the only one which is possibly supported by the direct testimony of two witnesses is act 17. As to that act, there is the testimony of two witnesses who were in the Haupt apartment and testified that Herbert Haupt was there with his parents. I suppose that proof of his presence in the apartment would constitute proof that he was harbored. As to the other five harboring acts, there is no direct proof. The evidence relied upon is entirely circumstantial. I call particular attention to overt act 23, which charges the defendant with harboring on June 27, 1942. The proof in support of this act is on its face glaringly insufficient.

As will be noted, the five witnesses whose testimony is relied upon by the majority in support of this act are all F. B. I. agents. Every word uttered by these witnesses which proved or tended to prove that Herbert Haupt was in the home of the defendant (the third floor apartment) on June 27, 1942 is purely circumstantial. There is not a word of direct proof in support thereof. More than that, it should not be overlooked that Hans Max Haupt and not Herbert Haupt is the defendant in this case, and there is not a scintilla of testimony, either direct or circumstantial, that the former was either in or about the apartment on this date. In fact, his name is not even mentioned by the witnesses. Just how the defendant was shown, by the direct testimony of two witnesses, to have committed this act, without even a mention of his name, is one of the several imponderabilities presented by the majority opinion.

[1] Actually, this 3-story apartment building contains six apartments, three in the rear and three in the front, and each set of apartments is reached by a separate stairway.

The proof concerning overt act 12 is likewise wholly deficient insofar as it pertains to this defendant. There is no proof either direct or circumstantial that this defendant was in or about his apartment on June 22, the date alleged. As the proof related in the majority opinion in support of this act shows, three 1904 of the government witnesses testified that Herbert Haupt, together with his parents, made a short visit with the people who lived in the first floor apartment. Three F. B. I. agents testified to seeing Herbert Haupt and his parents enter the apartment building. One of these agents stated that on one occasion he saw Mrs. Haupt and Herbert enter the apartment building and shortly thereafter the lights in the Haupt apartment were extinguished. The proof relied upon in support of the other harboring acts (except act 17) is purely circumstantial, as a reading thereof will disclose.

It is easy to perceive the great difficulty experienced by the majority in bridging the gulf with which they were confronted by the holding in the Cramer case that an overt act could not be supported merely by circumstantial evidence but that it required, as a minimum, the direct testimony of two witnesses. It was essential, however, that the gulf be bridged if an affirmance was to be had. At this point it appears my brethren were on the verge of repudiating the direct testimony rule of the Cramer case. The opinion states:

"It is worthy of passing note that it is the decision in the Cramer case, not the definition found in the Constitution, which adds the necessity of 'direct evidence'."

This insinuation directed at the Cramer decision overlooks the fact that the dissenting opinion in that case takes no issue with this rule pronounced by the majority; in fact, the dissent by inference approves of it.

Moreover, the court in the Cramer case was not the first which has held that an overt act must be supported by the direct testimony of two witnesses. Judge Learned Hand (then a District Judge) in United States v. Robinson, 259 F. 685, so held. On page 694, he states:

"I conclude, therefore, that it is necessary to produce two direct witnesses to the whole overt act."

He points out:

"* * * the case rested upon circumstantial evidence, which, while well-nigh conclusive in fact, was not direct as required. There seems to me no question whatever that without disregarding the whole theory of the Constitution I could not allow a verdict to stand if I received it. I must therefore direct it for the defendant."

1905 Furthermore, it is difficult to think that any court could hold otherwise. To say that the two witness rule can be met by circumstantial evidence is to render meaningless the constitutional requirement. The strength of circumstantial evidence does not depend upon the number of witnesses. One such witness might make a strong case or, on the other hand, a dozen such witnesses might prove little or nothing. Therefore, reasoned on any rational basis, the precise act as alleged must be supported by the direct testimony of two witnesses.

Notwithstanding the insinuation that the direct evidence rule of the Cramer decision was wrong, the opinion proclaims, "We must and do follow the court holding." This profession, however, is of little consequence in view of what follows. In summarizing the proof concerning these overt acts, the opinion states:

"As to several of these days (acts) there was simply the testimony of F. B. I. agents that they saw the saboteur, Herbert, and his father leaving and going into the front entrance of the six apartment building wherein the Haupts lived."

Then follows this remarkable pronouncement:

"In our opinion the testimony of persons who saw the son enter the front entrance which led to the front three apartments of the six apartment building, on the third floor of which the defendant-father lived, saw lights either go on or off in the third floor apartment soon after entry of the persons, saw the son emerge in different garments than that in which he entered that same entrance some time before; saw the son leave many hours after having entered—is direct testimony that said son was being quartered in the father's home."

It will at once be noted that the majority completely ignore the law which requires that each overt act must be proved as laid. Instead they combine a number of circumstances, some shown with reference to one act and some another, and conclude that these circumstances are "direct testimony that said son was being quartered in the father's home." Still more remarkable, however, is the fact that the majority are willing to hold that these circumstances in their combined form are direct proof. If such be the case, there is no longer any such thing as circumstantial evidence 1906 and all the court opinions and text books which have distinguished between direct and circumstantial proof might well be destroyed. It is another illustration of the length to which my brethren are willing to go in order to affirm this conviction.

So at this point we have an unmistakable holding by the majority consistent with the government's theory before this court that failure of proof by the direct testimony of two witnesses as to any of the overt acts submitted would require a reversal. With this proposition of law I agree. The majority escape the duty

to reverse only by holding, erroneously I think, that all of the acts submitted were sufficiently supported. The majority, however, in escaping from one dilemma find themselves confronted with another, and that is the theory on which the conviction was obtained. Such theory is embodied in instructions 50 and 51. Instruction 50 authorized a conviction if "Hans Max Haupt with treasonable intent performed any of the above alleged overt acts submitted to your consideration and that two direct witnesses have testified to such act." Instruction 51 (heretofore set forth in the quotation from the government's supplemental brief) is of like effect.

Referring to instructions 50 and 51, the opinion correctly states:

"In essence, these instructions told the jury that they were to find the defendant guilty if they found he performed any one of the treasonable overt acts submitted, to which acts two witnesses had testified."

Then follows the statement:

"If it were not for the fact that our study of the evidence as summarized above supports the jury's verdict of guilt on any or all of the overt acts submitted, reversal would on this theory follow."

I confess my inobility to comprehend this statement. "* * * reversal would on this theory follow." What theory? The one on which the case was tried or the one on which it was here submitted?

It appears, however, that this is the first step in the process by which the majority are to shift their position. This they must do when faced with the dilemma presented by the instructions. The second step by which the shifting process was completed is immediately disclosed by the following statement:

"It follows, we think, that if the jury was satisfied by the necessary quantum of proof and by two witnesses, that one or more of the submitted overt acts were proven, the crime was established."

If there be any doubt that their position has shifted, compare the conclusion just quoted with the following pronouncement previously made:

"There may be overt acts of legal sufficiency and established by the direct testimony of two witnesses, but the conviction will fall if the court submitted to the jury certain alleged overt acts which were charged in the indictment but which were either legally insufficient or not sufficiently established to present a jury question by the direct testimony of two witnesses."

Thus, instructions 50 and 51 are held to state properly the law of the case, notwithstanding the government's concession that the "failure to prove * * * any of the submitted overt acts would

require a reversal of conviction," notwithstanding that the majority have heretofore held the concession made by the government to be the law of the case, and notwithstanding the fact that the opinion devotes some eighteen pages in an effort to show that each of the overt acts submitted was supported by the direct testimony of two witnesses. The ability of my brethren to so abruptly and dexterously change horses is amazing. It seems to me that any kind of consistency would have required that this charge be held erroneous.

Without any apparent relevancy, it is also reasoned in support of these instructions that an overt act is not an element of the crime of treason. This is another illustration of the confused state of mind which has seized my brethren in the consideration of this case. It appears that the majority are of the view that an overt act need not be even alleged. It further appears from the argument on this point that they have decided that which is previously intimated, that is, the Cramer decision is bad law. As I read the Cramer decision, no single principle relative to the law of treason is so thoroughly established as that an overt act is an essential element of the crime. The majority so hold, at least by plain implication, and the minority so hold by direct statement. In the opinion of the former (page 29), it is stated: "* * * but so long as he commits no act of aid or comfort to the enemy, there is no treason." In a footnote to the dissenting opinion (page 54), it is stated: "It is well established that the overt act and the intent are separate and distinct elements of the crime of treason under the Constitution." (Citing many cases.) More than that, as the Supreme Court held in United States v. Gooding, supra, the overt acts must be specifically laid in the indictment and must be proved as laid.

1908

I agree with the government's theory that all of the overt acts submitted to the jury must be proven as laid in the indictment. It follows from this that the court's charge to the jury was fatally defective. As I have pointed out, there was a failure of proof by the direct testimony of two witnesses as to some of the acts submitted. Furthermore, even though all of the acts had been properly proven, as the majority have held, a reversal would still be required because of the erroneous instructions. An affirmance under such a situation means that the defendant has had a trial by this court on the acts submitted but not a trial by jury. While I have stated I agree with the government's theory that all of the overt acts must be properly proven as laid, I also think that the only possible theory on which this judgment could be affirmed with any degree of consistency and without repudiating the express language of the Supreme Court would be by a forthright holding that the instructions properly stated the law of the case. The

door to such a holding has been almost but not entirely closed by the Supreme Court. In the Cramer case (footnote page 36), the court held: "* * * the verdict must be set aside if any of the separable acts submitted was insufficient." Cited in support of this statement is Stromberg v. California, 283 U. S. 359. The court in that case (page 367) stated:

"The verdict against the appellant was a general one. It did not specify the ground upon which it rested. As there were three purposes set forth in the statute, and the jury were instructed that their verdict might be given with respect to any one of them, independently considered, it is impossible to say under which clause of the statute the conviction was obtained."

Thus it appears that in both the Cramer and Stromberg cases the court was referring to an act or charge without legal force. Although the question may not be free from all doubt, I am of the view that the same reasoning must apply in a treason case where the quantum of proof as to each overt act is prescribed by the Constitution. It is this fact which distinguishes treason
1969 from all other crimes. Such being the case, I am unable to differentiate between a situation wherein one of the acts submitted is legally insufficient and a situation wherein there is a failure as to one of the acts to meet the requirements of the Constitution in respect to proof. I am unable to believe but that a general verdict in one instance would be subject to the same deficiency as in the other. In either instance, the defendant would be deprived of a constitutional right.

The one certain thing about the opinion is that the judgment is at all hazards to be affirmed, because the majority think the defendant is guilty. In order to reach this goal, the opinion holds that all of the submitted overt acts must be proven by the direct testimony of two witnesses and that a failure of proof as to any one or more overt acts would require a reversal. It then holds that the court properly instructed the jury that it was authorized to convict the defendant if one or more of the submitted overt acts had been proven by the direct testimony of two witnesses. In order to sustain the conviction on the former theory, it was held that all of the submitted overt acts had been properly proven by the direct testimony of two witnesses. In doing so; however, the opinion treats and holds as direct proof that which is purely circumstantial. In sustaining the court's instructions to the jury, the theory on which the case was presented to this court, including the express concession of government's counsel, has been repudiated. I am unable to join in a result brought about by such inconsistent and illogical reasoning. In my opinion, the constitutional provision on treason has been nullified and the decision of the Supreme Court in the Cramer case (both the majority and

minority opinions) emasculated. This is so, notwithstanding that the opinion is replete with numerous protestations to the contrary.

I would reverse the judgment.

1911 In United States Circuit Court of Appeals

Before Hon. EVAN A. EVANS, Circuit Judge, Hon. J. EARL MAJOR, Circuit Judge, Hon. OTTO KERNER, Circuit Judge.

8607

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

HANS MAX HAUPT, DEFENDANT-APELLANT

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

Judgment

December 20, 1945

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, affirmed.

1912 In the United States Circuit Court of Appeals for the Seventh Circuit

[Title omitted.]

Petition for rehearing

Filed Jan. 2, 1946

May it please the Court:

We respectfully urge that a rehearing be granted in the case at bar and that the grievous errors committed in the trial of this case may be reexamined, insofar as the same identical or similar errors, committed in the case of Cramer v. United States, 325 U. S. 1, were made the basis for a reversal of that case by our Supreme Court. As stated in the opinion of this Honorable Court, the Cramer case may make conviction in treason cases difficult (and, without

doubt, the framers of the Constitution so intended it to be), but the law as there announced by the Supreme Court must be followed.

We shall mainly address ourselves to the endeavor of showing that there is no appreciable difference between certain of the errors committed in the trial of the instant case and similar errors committed in the Cramer case, and that, consequently, the Cramer decision requires a reversal of the conviction in the case at bar.

Counsel do not wish to be understood as waiving any of the points raised in the original brief and reply brief of appellant, which are not dealt with herein.

I

Construction of the Law of Treason as Laid Down by the Supreme Court of the United States in the Cramer Case

For a better understanding of the appellant's contention, 1913 we desire to give our construction of the decision of the United States Supreme Court in the Cramer case as follows:

An overt act of treason consists of an act of giving aid and comfort to the enemy, performed with a treasonable intent. The overt act must be proven by the direct evidence testimony of two witnesses to the same overt act. The treasonable intent may be inferred from the treasonable character of the overt act to which such two witnesses have so testified, and the act must have been pleaded as an overt act of treason in the indictment. However, if the overt act, though legally sufficient, is of colorless, insignificant or innocent nature on its face, then the treasonable intent with which the same is alleged to have been committed, must also be proven by the direct evidence testimony of two witnesses with reference to the same overt act. Treasonable intent, inferrable from some other alleged overt act of treasonable character per se, pleaded in the same indictment, which act, however, has not been proven by the direct evidence testimony of two witnesses, cannot be transferred to supply the required evidence of treasonable intent to a colorless, insignificant act, of innocent nature on its face. (Proof by confession in open Court has been omitted in the foregoing statement.)

If the foregoing is correct, as we shall undertake to prove presently, then it follows that in the law of treason certainly any overt acts withdrawn for lack of two-witness proof and any so-called background evidence (such as statements made by the defendant as long as six years before the happening of the overt act), testified to by only one witness, cannot supply the required element of treasonable intent to an overt act laid in the indictment. (All

so called background evidence in the case on appeal was testified to by only one witness.)

1914 To prove our construction of the decision of the Cramer case, we quote from the Court's opinion thereof: (The pages referred to are those of the original opinion of the Supreme Court of the United States.)

Page 20—325 U. S. 30:

"While to prove giving of aid and comfort would require the prosecution to show actions and deeds, if the Constitution stopped there, such acts could be inferred from circumstantial evidence. This the framers thought would not do. So they added what in effect is a command that the overt acts must be established by direct evidence, and the direct testimony must be that of two witnesses instead of one. In this sense the overt act procedural provision adds something, and something important, to the definition."

Page 21—325 U. S. 31:

"Bearing in mind that the constitutional requirement in effect is one of direct rather than circumstantial evidence, we must give it a reasonable effect in the light of its purpose both to preserve the offense and to protect citizens from its abuse. What is designed in the mind of an accused never is susceptible of proof by direct testimony. If we were to hold that the disloyal and treacherous intention must be proved by the direct testimony of two witnesses, it would be to hold that it is never provable. It seems obvious that adherence to the enemy, in the sense of a disloyal state of mind, cannot be, and is not required to be, proved by deposition of two witnesses."

"Since intent must be inferred from conduct of some sort, we think it is permissible to draw usual reasonable inferences as to intent from the overt acts."

Pages 23 and 24—325 U. S. 33, 34, and 35:

"From duly proven overt acts of aid and comfort to the enemy in their setting, it may well be that the natural and reasonable inference of intention to betray will be warranted. The two-witness evidence of the acts accused, together with common-law evidence of acts of others and of facts which are not acts, will help to determine which among possible inferences as to the actor's knowledge, motivation, or intent are the true ones. But the protection of the two-witness rule extends at least to all acts of the defendant which are used to draw incriminating inferences that aid and comfort have been given."

"The controversy before us has been waged in terms of intentions, but this, we think, is the reflection of a more fundamental issue as to what is the real function of the overt act in convicting

of treason. The prisoner's contention that it alone and on its face must manifest a traitorous intention, apart from an intention to do the act itself, would place on the overt act the whole burden of establishing a complete treason. On the other hand, 1915 the Government's contention that it may prove by two witnesses an apparently commonplace and insignificant act and from other circumstances create an inference that the act was a step in treason and was done with treasonable intent really is a contention that the function of the overt act in a treason prosecution is almost zero. It is obvious that the function we ascribe to the overt act is significant chiefly because it measures the two-witness rule protection to the accused and its handicap to the prosecution. If the overt act or acts must go all the way to make out the complete treason, the defendant is protected at all points by the two-witness requirement. If the act may be an insignificant one, then the constitutional safeguards are shrunken so as to be applicable only at a point where they are least needed."

"The very minimum function that an overt act must perform in a treason prosecution is that it show sufficient action by the accused, in its setting, to sustain a finding that the accused actually gave aid and comfort to the enemy. Every act, movement, deed, and word of the defendant charged to constitute treason must be supported by the testimony of two witnesses. The two-witness principle is to interdict imputation of incriminating acts to the accused by circumstantial evidence or by the testimony of a single witness."

Pages 27 & 28—325 U. S. 38 and 39:

"The shortcomings of the overt act submitted are emphasized by contrast with others which the indictment charged but which the prosecution withdrew for admitted insufficiency of proof. It appears that Cramer took from Thiel for safekeeping a money belt containing about $3,600, some $160 of which he held in his room concealed in books for Thiel's use as needed. An old indebtedness of Thiel to Cramer of $200 was paid from the fund, and the rest Cramer put in his safe-deposit box in a bank for safekeeping. All of this was at Thiel's request. That Thiel would be aided by having the security of a safe-deposit box for his funds, plus availability of smaller amounts, and by being relieved of the risks of carrying large sums on his person—without disclosing his presence or identity to a bank—seems obvious. The inference of intent from such act is also very different from the intent manifest by drinking and talking together. Taking what must have seemed a large sum of money for safekeeping is not a usual amenity of social intercourse. That such responsibilities are undertaken and such trust bestowed without the scratch of a pen to show it, implies

some degree of mutuality and concert from which a jury could say that aid and comfort was given and was intended. If these acts had been submitted as overt acts of treason, and we were now required to decide whether they had been established as re-
1916 quired, we would have a quite different case. We would then have to decide whether statements on the witness stand by the defendant are either 'confession in open court' or may be counted as the testimony of one of the required two witnesses to make out otherwise insufficiently proved 'overt acts.' But this transaction was not proven as the Government evidently hoped to do when the indictment was obtained. The overt acts based on it were expressly withdrawn from the jury, and Cramer has not been convicted of treason on account of such acts. We cannot sustain a conviction for the acts submitted on the theory that, even if insufficient, some unsubmitted ones may be resorted to as proof of treason. Evidence of the money transaction serves only to show how much went out of the case when it was withdrawn."

II

General Comment of Court's Opinion Herein

A. CONCERNING LEGAL SUFFICIENCY OF PROOF

(a) Overt acts Nos. 12, 20, 21, 22, and 23, charging harboring. It is our contention that not a single one of the overt acts has been proven by the direct evidence testimony of two witnesses. Not a single witness saw either Hans Haupt, the defendant, or Herbert Haupt, his son, inside of the Haupt apartment, being one of the six apartments located in an apartment building served by two house entrances, each entrance leading to more than one apartment.

Testimony to the effect that the entry or exit of Hans Haupt or Herbert Haupt was made through such house entrance, can only be and does constitute merely circumstantial evidence, and not direct evidence, as to harboring of Herbert by Hans Haupt inside of his apartment. Merely by inference can it be stated that Herbert Haupt, after the entry through the house entrance, went into the apartment of his father and mother, or that Hans Haupt was present in said apartment at such time or times.

It must be observed that the fact testified to by the FBI Agents was merely as to entry to the building and not as to any
1917 conduct of the defendant or any act of "harboring" by him.

'Direct' and 'circumstantial' evidence differ merely in their logical relations to the fact in issue. Evidence as to the existence of the fact is 'direct'. 'Circumstantial' evidence is com-

posed of facts which raise a logical inference as to the existence of the fact in issue." United States v. Greene, 146 F. 803, 824.

1. Greenleaf on Evidence, paragraph 13, defines direct evidence as being given when the thing to be proved is directly attested by those who speak from their own knowledge of its existence; circumstantial, when the thing to be proved is to be inferred from other facts satisfactorily proved. See, also, Wells, on Cir. Ev. C. 2, paragraph 1. People v. Palmer, 11 N. Y. St. Rep. 817, 820.

"An instruction that evidence is of two kinds, direct and circumstantial, and that 'direct evidence' is when a witness testified directly of his own knowledge of the main fact or facts to be proven, and that circumstantial evidence is proof of certain facts and circumstances in a certain case from which the jury may infer other and connected facts which usually and reasonably follow according to the common experience of mankind, is correct." State v. Gatlin 70 S. W. 885, 888, 170 Mo. 354; State v. Hillman, 127 S. W. 102, 103, 142 Mo. App. 510.

To the same effect are the following cases, and others too numerous to mention: Webb v. State 203 S. W. 955, 140 Tenn. 205, 15 A. L. R. 1034; State v. Riggs, 201 p. 281, 61 Mont. 25.

The defendant's contention in the case at bar is not only "that there is no direct proof that Herbert was actually in the Haupt apartment, the FBI testimony being circumstantial proof", but also that there was no direct proof (save in the case of overt act No. 17) that the defendant himself was in the apartment at any time when Herbert was there.

1918 As was pointed out by his Honor, Judge Major, in his dissenting opinion herein (page 55):

"More than that, it should not be overlooked that Hans Max Haupt and not Herbert Haupt is the defendant in this case, and there is not a scintilla of testimony, either direct or circumstantial, that the former was either in or about the apartment on this date (i. e., June 27, 1942 in re overt act No. 23). In fact, his name is not even mentioned by the witnesses."

Other than as to the occasion specified in overt act 17, there were no witnesses to the presence of the defendant in the apartment at the same time with Herbert, or regarding any act of the defendant relating to the charge of harboring etc., Herbert.

The opinion of the Court herein, at page 32, with respect to the "harboring and sheltering overt acts" states that "there can be little doubt that on the respective dates alleged, the son, Herbert, stayed overnight in his father's home, ate meals there", etc. This Honorable Court may be convinced thereof, but will it deny to the defendant the benefit of the Constitutional provision that "No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act"?

Here, as stated in the Cramer case, "It is not relevant to our issue to appraise weight or credibility of the evidence apart from determining its constitutional sufficiency."

At page 31 of the Court's opinion, in the case at bar, your Honors grant the necessity of the two-witness proof of overt acts, thus:

"Of great importance is also this statement: 'It is only overt acts by the accused which the Constitution explicitly requires to be proved by the testimony of two witnesses.'"

1919 There being no testimony of witnesses to acts by the accused at the times and places charged in overt acts 12, 20, 21, 22 and 23, the defendant is entitled to such a finding from this Honorable Court upon a rehearing, which he prays may be granted herein. As pointed out in your Honor's opinion, failure of proof on any of the submitted overt acts requires a reversal of the case.

(b) Overt act No. 17, charging harboring. We respectfully point out that the testimony of witnesses set forth in the court's opinion relative to Herbert's eating food in the apartment of his parents, is not all-inclusive, and, therefore, of ambiguous nature. In footnote 18 on page 19 of the opinion, Gustave Zermer is quoted as testifying to the effect as follows: "* * * Testified on redirect examination that Herbert and Hans came in the apartment. Says they went right into the kitchen and had supper. Defendant and Herbert were in the apartment. They were eating supper."

However, it is not shown in the opinion that on cross-examination and on recross Zermer admitted, that during his visit he was sitting in the parlor at a place from where he could not look into the kitchen; that he did not see Hans and Herbert go into the kitchen; that he himself did not go into the kitchen, while Hans and Herbert were supposed to be eating there; that he did not see them eat and he did not hear any noises in the kitchen. (Appellant's Brief, pages 29 to 31.)

It is also omitted in the opinion regarding this act of eating, that Gerda Melind Saure testified, that Herbert did not have any food at all in the home of his parents during the time referred to By Zermer; that various FBI agents testified, that Herbert had Hans Haupt, together with Herbert's mother, ate their supper in a restaurant on that day, from 6:00 p. m. until 6:45 p. m. Zermer fixed the time of the alleged eating of the supper in the home as being at 8:00 p. m. (Appellant's Brief, page 31 and Appellee's Brief, page 18.)

1920 It is therefore a proper statement, that there was not a single witness to Herbert Haupt having any meal or meals in the home of his parents.

(c) Overt Act No. 16; making a further payment in cash towards the purchase of an automobile and completing arrange-

ments for the purchase of said automobile, and purchasing an automobile for the enemy, Herbert Haupt, on June 24, 1942.

There was but one witness to this alleged overt act, namely, Farrell. It is contended by the court that Vinson's testimony regarding receiving money by Vinson from some unspecified source, is direct testimony to the act of Hans Haupt paying over such money. However, there is no testimony to the effect that Vinson saw Hans Haupt pay over the particular money. The Government established by definite questions put to Farrell, that Haupt paid the money, but it evaded such questioning with reference to witness Vinson who merely testified "he received the money that had been put down" without stating from whom he received it. In fact he testified he only saw Hans and Herbert Haupt come into the sales room on June 24th and did not talk to them. Concerning the note mentioned in the testimony, it is clear that the same was signed on June 23rd, when the mortgage was made out.

The overt act No. 16 as charged in the indictment states that Hans Max Haupt "made a further payment." An overt act must be proved as laid by the direct evidence testimony of two witnesses. There was no second witness who testified that he saw Hans Max Haupt make such payment. There was no direct testimony to such fact by a second witness.

It is also stated in overt act No. 16 as follows: "Said Hans Max Haupt * * * did purchase said automobile for said 1921 enemy Herbert Haupt * * *." An overt act must be proven as laid. But there were not two witnesses to this charge. Witness Vinson testified as follows:

Q. * * * Do you know who purchased the car?

A. Yes, Hans Haupt.

Q. And was there any conversation as to whether it was a car for Hans or for someone else?

A. No. (Bill of Exceptions P. 470.)

The act was not proven as laid and as required by the Constitution of the United States, as it was necessary for the Government to prove by two witnesses that the car was purchased for Herbert Haupt.

(d) Overt acts Nos. 10 and 11, accompanying Herbert to regain employment in Simpson Optical Company. On page 28 the Court states in its opinion:

"There can be no doubt that the father * * * sometimes volunteered information as to the son's whereabouts in the interval since he left the employ of the company, or that the son had now registered for the draft, etc. This was established by the testimony of two witnesses."

The Court is in error in making the foregoing statement, as not even a single witness present at the visits of the three Haupts

at Koch's or Grunau's home testified that Hans Haupt spoke one single word about his son's whereabouts in the interval since he left the employ of the company. And concerning the registration for the draft, only one witness, Mr. Koch, testified as follows.

"At that time Hans Haupt said, 'I sent him out this morning to the draft board and the FBI'." (Bill of Exceptions 368–373 and 421–424.)

CONCERNING LEGAL SUFFICIENCY OF CERTAIN OVERT ACTS CHARGED

Assuming full and sufficient proof (i. e., by two direct witnesses) of certain of the overt acts charged, neither the proof nor the allegation constitute, or could constitute, treason as declared by the Supreme Court in the Cramer case. We refer specifi-
1922 cally to overt acts 10, 11, 13, and 15. Each of these overt acts merely charge the defendant with the act of "accompanying" Herbert Haupt, with only a variation as to the time and destination stated.

Essentially, the same charge of accompanying (plus conferring, treating and counseling with) Werner Thiel, an enemy of the United States, was made in overt act No. 2 of the Cramer case. The act of Cramer in accompanying Thiel, as charged in overt act No. 2, was fully proved in that case, viz.:

"By direct testimony of two or more agents it was established that Cramer met Thiel and Kerling on the occasions and at the places charged and that they drank together and engaged long and earnestly in conversation. This is the sum of the overt acts as established by the testimony of two witnesses."

The Supreme Court reversed the Cramer conviction, making the following specific ruling:

"We hold that overt acts 1 and 2 are insufficient as proved to support the judgment of conviction, which accordingly is reversed."

Referring to the Government's proof of overt acts 1 and 2 in the Cramer case, the Supreme Court said:

"But if it showed him (Cramer) disposed to betray, and showed that he had opportunity to do so, it still has not proved in the manner required that he did any acts submitted to the jury as a basis for conviction which had the effect of betraying by giving aid and comfort. To take the intent for the deed would carry us back to constructive treasons."

On page 31 of the opinion, this Honorable Court states:

"The overt acts here involved were harboring an enemy, buying a car, accompanying to seek reemployment, the first an essential to any accomplishment of the saboteurs' mission, the latter two

were directly ordered by the saboteur's superior. Their seeming harmlessness therefore is dispelled when they are viewed in their 'setting,' their 'environment.' During the week the son was with the father, little else was done (except visits to restaurants, cinema, taverns, and friends)."

1923 Overt act No. 11 charging the defendant, "accompanied the said Herbert Haupt to the home of Heinrich Koch, 7240 N. Odell Avenue, Chicago, Illinois, for the purpose of further assisting said enemy in procuring employment * * *;" and

Overt Act No. 15 charging the defendant, "accompanied the said enemy Herbert Haupt to the Warner Motor Sales, 958 Diversey Parkway, Chicago, Illinois, to complete the arrangements for the purchase of an automobile for said enemy, * * *" are both in the same class. Now, we have definitely established that the Government failed to prove Overt Act No. 16, which involved the actual doing of the thing, for which the defendant accompanied Herbert Haupt as charged in Overt Act No. 15. Is Overt Act No. 15, a most innocent act on the face of it, a legally sufficient overt act? All it charges is the act of accompanying. In the Cramer case it was held, that such act is not a legally sufficient overt act.

In fact, overt act No. 15, as well as the other overt acts, Nos. 10, 11, and 13, charging merely "accompanying" are not separate overt acts, but are merely parts of the particular overt acts which involve the ultimate purpose, and should not be pleaded as separate overt acts. As separate overt acts they are legally insufficient. If it were permitted to split one overt act into any number of parts, and then plead each one of such parts as separate overt acts, it would only be necessary to ascribe a treasonable intention to each one of such overt acts, and there could never be failure of proof of some of the overt acts, namely, those which contain the actions of commonplace, everyday occurrences, such as "accompanying." However, this ingenious method does not work, as such overt act would necessarily be legally insufficient to constitute treason.

And so it was held in the Cramer case, where the action of "accompanying" was fully proven by direct evidence testi-
1924 mony of two or more witnesses.

This Honorable Court, in its opinion in the instant case, concedes that the case must be reversed if any of the overt acts submitted were "either legally insufficient or not sufficiently established to present a jury question, by the direct testimony of two witnesses." (Opinion pages 7 and 45.)

The Government likewise makes this concession (brief filed

by Government after oral argument), which, in view of the foregoing facts, amounts practically to a confession of error.

We urge the Court to re-examine overt acts 10, 11, 13 and 15, and the decision of the Cramer case with respect to the parallel overt act No. 2 of Cramer.

C. CONCERNING MISCELLANEOUS FACTS AND CONTENTIONS

We respectfully point out some discrepancies in the Court's opinion. On page 32 the Court states:

"One of the instructions Herbert received was to obtain a car to facilitate transportation of the explosives from the beach in Florida, for delivery to the various points of sabotage, and as a means of travel for the members of the expedition. The purchase of the car was arranged for within a couple of days of Herbert's return—showing urgency of his duty. The old Plymouth car had not become obsolete, in fact it was used by the Haupt family during the week of surveillance. There would not have been the rush to buy the new car, without the pressing need for it."

A reading of Burger's testimony will disclose that his recital of events in Germany was objected to as hearsay evidence, and that time and again it was asserted by the Government that such testimony was merely for the purpose of proving the enemy status of Herbert Haupt, and that the testimony regarding the instructions given to Herbert Haupt and regarding other events in Germany were specifically restricted to that one point.

1925 We, therefore, believe it is error for the Court to now use this testimony for any different purposes. Also the other conclusions seem to be erroneous. There was no need for Herbert Haupt to acquire an automobile immediately upon his return because of "urgency of his duty." The saboteurs were not to begin operations until at least three or four months after they had landed. (Appellee's Brief p. 5; Bill of Exceptions 111.) And while it was true that the father's car, the old Plymouth, had become obsolete, it should be remembered that the father used the car daily in his business as a painter, decorator and bricklayer. (Appellant's Brief 69 to 75.)

It is perhaps the common experience of every father, who has a son or sons at home, that it is very hard for the father to have the use of the family car, as the son or sons seem to have constant and urgent need therefor. And it seems that most fathers know that such constant and urgent need occurs the very day when the son or sons return, as so many have done in recent months. In the present case it must be remembered that Herbert Haupt had owned a car, which he left behind, and which the father had taken over and practically converted into a painter's truck.

It is not correct that the defendant did little else, except visiting restaurants, cinemas, taverns and friends, as may be inferred from the Court's comments on page 32 of the opinion, stating, "During the week the son was with the father, little else was done except visits to restaurants, cinemas, taverns and friends." In fact, all of this was something the defendant did not do. The evidence shows that Hans Haupt, the defendant, worked at his trade every day, including Sunday, while his son was here, after the son's return, up to the day of the son's arrest.

The record does not show any post-war utterances of the
1926 defendant to the effect that he cooperated in Herbert Haupt's mission (page 38), except by the testimony of one witness, the life-termer Hamby. There is nothing to show in the record that the jury believed Hamby, whose testimony must be read to be appreciated.

"But the jury was weighing the story of the witnesses and the defendant. The latter was throwing bricks at these defendants, discrediting them, and pointing to their prison record. Perhaps the jury believed defendant was living in a glass house." (Opinion page 38.) Perhaps. But perhaps the jury became misled and confused; perhaps there were erroneous instructions to the jury; perhaps the jury could not separate the evidence, introduced merely to show the enemy status of Herbert Haupt, the son, from the acts of the defendant, the father; perhaps the jury became prejudiced through the many exhibits, such as incendiary bombs, timing devices and other destructive devices, also introduced merely to show the enemy status of Herbert Haupt, perhaps the jury was affected by the fact, that we were at war, or the disloyal utterances made by Hans Haupt, as long as five years before his son left for Germany may have been a deciding factor.

Concerning Evidence re Exhibits, the Court states on page 43 of the opinion:

"As against the defendant this evidence was receivable to show the treason to which Herbert was a party. It was necessary for the Government to show treason and *also* that defendant was a party to said treason. This evidence tended to show treason. The burden was on the Government to show (a) a treasonable enterprise and (b) defendant was a party to it. This evidence was part of the proof tending to establish (a). And the crime of treason is not child's play. It's a most serious matter. In all its naked wickedness, it is shocking. To offer evidence that the actors
1927 used high power explosives to destroy war industries, to kill large bodies of workers, to obtain war secrets of great value to the enemy, was no doubt highly impressive and pursuasive with a jury of loyal American citizens. The complaint of counsel, however, should not be directed to the inadmissibility

of such evidence. It should be directed to the action of defendant and his son. As against each of them such evidence would not have been harmful, had Hans and Herbert not been actors playing a leading role in the perpetration of said treason."

It is respectfully submitted that Herbert Haupt has never been charged with the crime of treason, nor tried therefor; nor had any high powered explosives been used to destroy war industries, or to kill large bodies of workers (contrary to the assumptions made on page 43 of the Court's opinion). No act of sabotage was ever committed either by Herbert Haupt or by the defendant. It has been the theory of the defense in the case at bar, that Herbert Haupt abandoned his mission after he reached America, and counsel believe such to have been the fact. We are informed that such defense was made on behalf of certain of the saboteurs at the military trial and is now confirmed by information recently released to the press by the Department of Justice.

The exhibits of explosive devices, admitted over defense objections, were not admissible against the defendant, and were not even connected up with Herbert Haupt. In fact, the exhibits and the entire testimony of Burger and of the FBI agents and experts was specifically restricted, when admitted in evidence, to show the enemy status of Herbert Haupt.

It was counsel's duty to object to incompetent evidence, just as it was counsel's duty to point out the criminal record of the witness Hamby, to which certain references are made on page 38 of the Court's opinion.

1928 III

THE JURY WAS ERRONEOUSLY INSTRUCTED WITH RESPECT TO THE QUESTION OF TREASONABLE INTENT OF THE DEFENDANT. DEFENDANT REQUESTS A REVIEW UPON THIS IMPORTANT QUESTION WHICH THE COURT SEEMS TO HAVE MISAPPREHENDED

The accused must intend to betray his country by means of the act charged; the act must be one that gives aid and comfort to the enemy; and the accused must commit the act with treasonable intent (Cramer v. United States, 325 U. S. 1).

A man cannot commit treason and not know it.

The case was tried on the erroneous theory that the specific treasonable intent was not required to be shown on each submitted overt act.

The Court instructed the jury in instructions Nos. 53 and 54 to the effect that the defendant in committing a treasonable act, need not be conscious of the specific thought that in doing the act, he is "going to commit treason."

The jury were further instructed by the Court, in instruction No. 49, that if they "believe beyond a reasonable doubt that the defendant did actually perform any of these other alleged overt acts which were not proven to the degree required by the Constitution, you may consider any such act in determining the question of intent with which the defendant may have performed any of the above overt acts submitted to your consideration and not withdrawn", etc.

Attention is called to the fact that this instruction does not even required the belief of the jury regarding the so-called "withdrawn" overt acts to be supported by any evidence whatsoever, and 1929 it particularly states that such acts need not be proved by two witnesses as required by the Constitution.

These instructions are directly at variance with the principles of law established in the Cramer case, viz.:

Page 21—325 U. S. 31:

"Of course, the overt acts of aid and comfort must be intentional as distinguished from merely negligent or 'undesigned ones. Intent in that limited sense is not in issue here. But to make treason the defendant not only must intend the act, but he must intend to betray his country by means of the act. * * *

Page 24—325 U. S. 34, 35:

"Every act, movement, deed and word of the defendant, charged to constitute treason, must be supported by the testimony of two witnesses. The two-witness principle is to interdict imputation of incriminating acts to the accused by circumstantial evidence or by evidence of a single witness. The prosecution cannot rely on evidence which does not meet the Constitutional test for overt acts to create any inference that the accused did other acts or did something more than was shown in the overt act, in order to make a giving of aid and comfort to the enemy. * * *

Pages 27 and 28—325 U. S. 39:

"But this transaction was not proven as the Government evidently hoped to do when the indictment was obtained. The overt acts based on it were expressly withdrawn from the jury, and Cramer has not been convicted of treason on account of such acts. We cannot sustain a conviction for the acts submitted on the theory that, even if insufficient, some unsubmitted ones may be resorted to as proof of treason."

Conviction was made doubly sure, and defendant's chance to have good motives considered by the jury with respect to his intent and purpose in doing the acts with which he was charged, was

destroyed by the following charge contained in instruction No. 54, viz.:

"* * * the fact that his motive may not have been to aid the enemy is no defense."

and also that,

"* * * the fact that you may also believe that his motive in so doing, if you find that he did, was for example, to help his son, would not in such event change the fact that he had a criminal and treasonable intent."

1930 A further erroneous and most prejudicial instruction was given to the jury in instruction No. 58 to the effect that statements made by the defendant prior to our declaration of war with Germany (testified to by only one witness) might be considered by the jury, *sic:*

"* * * may be borne in mind by you in determining what his intent may have been after this country was at war with Germany, in committing, if you find beyond reasonable doubt that he did so commit, any of the various overt acts charged in the indictment and submitted to your consideration by the court in these instructions."

In the *Cramer case*, the Supreme Court held that:

Page 24—325 U. S. 35:

"The two-witness principle is to interdict imputation of *incriminating acts* to the accused by circumstantial evidence or by testimony of a single witness."

And the Court there made the further comment, as follows:

Page 31—325 U. S. 44:

"To use pre-war expressions of opposition to entering a war to convict of treason during the war is a dangerous procedure at best."

Needless to say, we subscribe to the comments made by his Honor, Judge Major in his dissenting opinion in the case at bar. For the foregoing reasons, and for the reasons stated in said dissenting opinion in the case at bar, we respectfully request that a rehearing may be granted herein to the defendant, and that upon such rehearing the judgment of conviction and sentence of life imprisonment may be reversed and set aside by this Honorable Court.

Respectfully submitted.

PAUL A. F. WARNHOLTZ
FREDERICK J. BERTRAM,
Attorneys for Hans Max Haupt, Defendant-Petitioner.

1931 [File endorsement omitted.]

1932 [File endorsement omitted.]

1933 In the United States Circuit Court of Appeals for the Seventh Circuit.

[Title omitted.]

Answer to defendant's petition for rehearing

Filed Jan. 11, 1946

May it please the Court:

In his petition for rehearing, the defendant contends:

First: That the majority of the Court has misconstrued the law as enunciated in the Cramer case.

Second: That the majority of the Court erred in holding that Overt acts, Nos. 12, 20, 21, 22, and 23, all of which charged the harboring of the German saboteur, Herbert Haupt, were proved by the direct testimony of two witnesses.

1934 Third: The majority of the Court erred in holding that Overt Act No. 16, charging that Hans Haupt made a further payment in cash towards the purchase of an automobile and completed arrangements for this purchase, was proved by the direct testimony of two witnesses.

Fourth: Assuming full and sufficient proof by two witnesses had been made of Overt Acts Nos. 10, 11, 13 and 15, the majority of the Court nevertheless erred in holding that these acts, which were acts of accompanying Herbert Haupt to the Warner Motor Sales and to the homes of Grunau and Koch, constituted acts of treason under the Cramer decision.

Fifth: That there were "miscellaneous discrepancies" in the opinion of the majority of the Court.

Sixth: That instructions Nos. 49, 53, 54, and 58 were erroneous in law.

In support of his first contention the defendant argues that treasonable intent may not be proven by extraneous evidence and must be proven by two witnesses. This theory was thoroughly argued in the defendant's original brief and completely answered by the Government in its brief. The majority of this Court correctly held adversely to the defendant's contention. In holding against the defendant's contention, this Court fully and completely buttressed its views with liberal and applicable quotations from the Cramer case. Further discussion of this contention would be repetitious.

The second contention of the defendant is devoted to a quibble as to whether or not the testimony establishing the harboring of Herbert Haupt in the home of Hans Haupt was direct or circumstantial. We agree with the majority of the Court that the characterizing of such testimony as circumstantial rather than
1935 direct is the "extreme of tenuity." It is our firm conviction that the harboring of the enemy saboteur, Herbert Haupt, by the defendant, as alleged in each overt act, was conclusively established by the direct testimony of two witnesses. The proof showed that the building entrance into which the Haupts disappeared was the only entrance leading to their apartment. It further showed that they leased the apartment on the third floor. Two witnesses, Mr. and Mrs. Kluczyk, the occupants of the first floor, testified that Herbert Haupt was not staying in their apartment or in the basement. Two witnesses, Mr. and Mrs. Proost, the occupants of the second floor, testified that Herbert Haupt was not staying in their apartment. Numerous witnesses testified that the defendant, his wife, and Herbert Haupt, came in and out of the building in which the defendant resided, a great many times during the week in question, frequently together. Herbert Haupt went into and came out of the building thirty-five times during that week. Each and every entrance and exit made by Herbert Haupt during that time was testified to by the direct testimony of at least two witnesses. Two witnesses, Mr. Zerner and Mrs. Saure, testified that they were inside the defendant's apartment with the defendant, his wife, and Herbert Haupt, and carried on discussions with these individuals in the defendant's apartment. Numerous times F.B.I. agents saw lights either go on or off in the third floor apartment of Hans Haupt soon after the entry of Herbert Haupt and on occasions saw the son emerge in different garments than those he wore when he entered the building earlier. In the face of such testimony, it is truly the "extreme of tenuity" to contend that the evidence establishing the harboring of Herbert Haupt in his father's apartment, was circumstantial rather than direct.

The third contention is likewise without merit. It was
1936 raised in the defendant's original brief, and fully argued therein. The Government fully answered this contention in its original brief. In its Opinion, this Court completely and correctly sets forth the testimony establishing the commission of Overt Act No. 16. It did not misapprehend this evidence or misinterpret its significance. We feel that, under the circumstances, no useful purpose can be served by rearguing this point.

The fourth contention of the defendant, briefly stated, is that the acts of accompanying Herbert Haupt to the Warner Motor Sales and to the homes of Grunau and Koch, even though estab-

lished by direct testimony of two witneses, are insufficient acts of treason under the Cramer decision, in that they were colorless and insignificant acts. This is the same argument that was made in the defendant's original brief and dwelled upon at length in oral argument. The Court has completely and correctly disposed of this contention adversely to defendant and a rediscussion of this point would serve no useful purpose. In their setting, as indicated by the Court, these acts were clearly treasonable.

The fifth contention of the defendant is entitled "Concerning Miscellaneous Facts and Contentions." Under this heading, the defendant, aside from finding fault with the use by the majority of this Court on page 43 of its Opinion of the word "used" immediately preceding the words "high power explosives to destroy war industries", when it apparently meant to employ the words "intended to use," the defendant contends that the majority of the Court misused the testimony of Burger in discussing on page 32 the purchase of an automobile and in discussing on page 43 the admissibility of the pictures of the boxes of ammunition which were cached on the beach in Florida, etc. The defendant, in passing, also criticizes the view of the majority of the Court that urgency existed in the purchase of the automobile and states that no urgency existed for the reason that the saboteurs were not to begin operations for 3 or 4 months. It is apparent from a reading of the Opinion of the majority of the Court that there has been no misuse of the testimony of Burger by this Court in its discussion of the legal sufficiency of Overt acts concerning the purchase of the automobile. Berger's testimony established the nature of the saboteur's mission and it was established by other witnesses that the defendant well knew the mission of Herbert Haupt and his urgent need to procure an automobile. In this connection, this Court's attention is particularly called to the testimony of Hamby as set forth in Bill of Exceptions 985.

1937

The defendant's claim that the exhibits, such as photographs of boxes of ammunition, establishing the enemy status of Herbert Haupt, and his mission here as an agent for Germany, was misused by this Court in the majority Opinion, has no merit, whatever. It is clear from the majority Opinion, that it regarded this evidence as establishing only one essential element of the crime, namely, that Herbert Haupt was an enemy of the United States. The other essential element of the crime, of course, was very definitely and clearly established by other evidence, which disclosed that the defendant treasonably gave aid and comfort to this enemy.

The sixth contention of the defendant concerns instructions Nos. 49, 53, 54, and 58. The arguments now made against the giving of these instructions by the trial court are identical with

those previously advanced by the defendant in his earlier brief filed with this Court on this appeal, and since they were fully answered by the Government in its brief earlier filed with this
Court, we see no necessity of reargueing the propriety of
1938 these instructions. The correctness of all the legal principles involved in each of these instructions was thoroughly considered by the Court in its Opinion, and the defendant's contention, now reiterated, was properly rejected.

We cannot close this reply to the defendant's Petition for Rehearing without answering the apparent misconception by Judge Major of the meaning and extent of the supplemental memorandum filed by the Government after oral argument of this cause. At no time has the Government adopted two theories of this case. At all times it has consistently advanced but one theory. This theory was advanced in the trial of this case and adhered to throughout all proceedings of this cause on appeal.

So that there be no misunderstanding we emphatically state that we believe it to be a correct principle of law that proof of one or more overt acts by the direct testimony of two witnesses is sufficient to authorize a conviction for treason. We further believe that the evidence introduced in this case fully supported the jury's verdict of guilt on any and all of the overt acts submitted.

We also affirm the correctness of Instructions 50 and 51 which as Judge Evans states told the jury that they were to find the defendant guilty if they found he performed any one of the treasonable overt acts submitted to which two witnesses had testified. As long as each of the submitted acts were attested to by two witnesses and were sufficient as acts of treason the instruction is perfectly correct. That was our belief in the trial court and that is our belief now.

Two obvious misconceptions are apparent in the Opinion of Judge Major. It is apparently his belief that the Government tried its case in the lower court upon the theory that there was no necessity for having all of the submitted overt acts constitutionally sufficient and proven by two witnesses, as long as there was one
adequately proven treasonable act.
1939 That this belief never existed in the mind of Government counsel is apparent from the fact that they voluntarily withdraw from the Jury's consideration numberous Overt acts which were clearly Overt acts of treason, but which were only proven by one witness. As an example, we may point to the withdrawal of the overt acts testified to by Zerner and Eggert. The Government counsel were at all times consistent in their belief that the submitted overt acts should be sufficient in law and proven by two witnesses, as required by the Constitution. It was further

the Government's conviction that each of the overt acts submitted to the jury were such acts.

On page 50 of his dissenting Opinion Judge Major states:

"The case was tried and the jury was instructed on the theory that proof of one or more overt acts by the direct testimony of two witnesses was sufficient to authorize a conviction. In seeking affirmance in this court, it is conceded by the Government itself, *that such is not the law* and that a reversal is required, if there was a failure of proof as to any one of the overt acts submitted." [Emphasis supplied.]

The Government in its Supplemental Memorandum did not concede that the instructions referred to in the above quotation enunciated an incorrect principle of law. We stated, in substance, only that there must be direct proof by two witnesses to each treasonable overt act submitted to the jury because of the general verdict returned by it and because of the giving of Instructions Nos. 50 and 51. It was our belief that in the light of those instructions (which undoubtedly correctly stated the law and which, contrary to the Opinion of Judge Major, we did not concede to be an erroneous enunciation of a legal principle governing the law of treason) and in the light of the general verdict the submission of a legally insufficient or unproven act might require a re-
1940 versal by the court. It was further our belief, of course, and is our belief now that a reversal would be improper for the reason that the evidence supported the jury's verdict of guilt on any and all of the overt acts submitted.

Of course, this is by no means a concession that a conviction for treason requires that the jury find that a defendant performed more than one of several legally sufficient submitted acts of treason. Under the Constitution only one overt act need be proven.[1] Therefore, if a defendant were shown to have committed only one treasonable act, proved by the necessary two witnesses to that same Act, he could be guilty of the crime of treason.

For example, let us say that two Overt acts are submitted to the jury. As to Act No. 1, there is no contest. Two witnesses clearly establish that to be an act of treason. As to Act No. 2, there is a contest. Two witnesses affirm that this act (an act of treason) was committed by the defendant. Two other witnesses, however, contend that the defendant did not perform this act, so that the jury, as the triers of the facts, must determine, as a matter of credibility, which set of witnesses is telling the truth. In such a situa-

[1] Judge Major in expressing the opinion of the court on the first appeal of this cause (United States v. Haupt, 136 F. (2d) 661, 665) stated:

"The Constitutional requirement of two Witnesses to the same overt Act' forms no part of the definition of the offense. It relates solely to the proof required before a conviction can be had. The crime itself may be established in the same manner as any other crime, but before there can be a conviction on act in its promotion must be established by two witnesses." [Italics supplied.]

tion it most certainly would not be erroneous to instruct the jury that they may convict if they find that one of the two acts was committed by the defendant. As long as both acts are legally sufficient acts and as long as two witnesses attest to both acts, then either act, if believed by the jury, would warrant a verdict of guilty.

The Government has in no way shifted its position. In-
1941 structions Nos. 50 and 51 have a most solid basis in the law, the Constitution itself, which states, "There shall be no conviction of treason unless on the testimony of two witnesses to the same overt act." It will be noted that the word used is "act" and not "acts." There is no authority whatsoever for the contention that more than one overt act must be proven to convict of the crime of treason.

Conclusion

In closing, the Government most respectfully submits that the majority of this court thoroughly and correctly analyzed the evidence and correctly enunciated the law of treason insofar as it is applicable to this case. We know of no instance where a Court of Appeals has analyzed the facts and law relative to a case with greater care, industry, and irrefutable logic than is disclosed by the opinion of the majority of the Court in this case. Every contention advanced by the defendant has been thoroughly explored and has been carefully and exhaustively considered. The result is, in our opinion, eminently correct, both in law and in fact. We most earnestly urge that the Defendant's Petition for Rehearing be denied.

Respectfully submitted.

J. Albert Woll,
United States Attorney.
Richard G. Finn,
Special Assistant to the United States Attorney.

1943 In United States Circuit Court of Appeals

[Title omitted.]

Order denying petition for rehearing

Jan. 24, 1946

It is ordered by the Court that the petition for a rehearing of this cause be, and the same is hereby, denied. Hon. J. Earl Major filed a written opinion this day, dissenting from the order of the majority of the Court denying the petition for a rehearing.

1944 In the United States Circuit Court of Appeals for the Seventh Circuit

No. 8607—October Term, 1945, January Session, 1946

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

HANS MAX HAUPT, DEFENDANT-APPELLANT

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

On petition for rehearing

January 24, 1946

Before EVANS, MAJOR, and KERNER, Circuit Judges

Petition for Rehearing denied. MAJOR, Circuit Judge, dissenting. Ordinarily, there is no occasion for a dissenter to analyze an answer to a petition for rehearing. In the instant case, however, the government has so completely demonstrated the fallacy of its position that some further comment seems to be in order. The government asserts that the writer of the dissenting opinion has misconceived the situation. The writer admits that such a characterization of him is often in order. In the instant case, however, I think it can be demonstrated by their own words that it is the learned counsel for the government who have not only misconceived the situation but have exposed their failure to grasp the fundamental issues of the case. As a famous American was prone to say, "Let's look at the record."

I only desire to examine the government's present position as stated in its answer to the petition for rehearing concerning
1945 that which I have heretofore labeled as the two theories, inconsistent in their nature, upon which the judgment is to be affirmed: All through the government's most recent exposition runs the basic fallacy epitomized in the last paragraph of its answer. "Instructions No. 50 and No. 51 have a most solid basis in the law, the Constitution itself, which states, 'There shall be no conviction of treason unless on the testimony of two witnesses to the same overt act.' It will be noted that the word used is 'act' and not 'acts.' There is no authority whatsoever for the contention that more than one over' act must be proven to convict of the crime of treason."

Of course, as an abstract proposition that is the law, with which I doubt any member of the Bench or Bar would take issue. The

"fact is, however, that it is entirely beside the point and wholly irrelevant to any issue in this case. This abstract proposition would be pertinent in a case where only one overt act was submitted to the jury. Here, however, twelve of such acts were submitted and the question is whether under such circumstances proper proof of one act is sufficient to authorize a conviction or whether all of the submitted acts must be properly proven.

The answer states: "It is apparently his belief (Judge Major's) that the Government tried its case in the lower court upon the theory that there was no necessity for having all of the submitted overt acts * * * proven by two witnesses, as long as there was one adequately proven treasonable act." The answer then asserts: "That this belief never existed in the mind of Government counsel * * *." How this disclaimer can be advanced, in view of the fact that the jury was authorized by the court's instructions to convict if one act had been sufficiently proven, is beyond my comprehension. Not only did I think that the government tried its case on the theory stated, but the majority must also have thought so. The opinion aptly states: "In essence, these instructions told the jury that they were to find the defendant guilty if they found he performed any one of the treasonable overt acts submitted, to which acts two witnesses had testified."

In the interim between the trial of the case and its presentation to this court, the Cramer decision was rendered by the Supreme Court. By that decision a serious question was raised as to the validity of the theory embodied in the court's instructions. Government's counsel, after mature deliberation, in a supple-1946 mental brief stated its position as follows: "It would seem from a review of the authorities, including Cramer v. United States (also citing other cases), that the failure to prove * * * any of the submitted overt acts would require a reversal of the conviction." In other words, it was the government's position that proof of all the overt acts was required and that the failure to prove any of such acts would (not might, as asserted in the answer) require a reversal.

So, surely there can be no doubt but that the case was tried and submitted to the jury on the theory that sufficient proof as to one of the submitted overt acts would sustain a judgment of conviction and that it was presented to this court on the theory that proof of all the submitted overt acts was required.

Notwithstanding that these two diametrically opposed and inconsistent theories have been advanced by the government, one in the trial court and the other in this court, the government in its answer boldly asserts: "At no time has the Government adopted two theories of this case. At all times it has consistently advanced but one theory. This theory was advanced in the trial of this case

and adhered to throughout all proceedings of this cause on appeal."

The following paragraph in the answer demonstrates not only the confusion attending the labor of government's counsel but it reaches heights of inconsistency rarely found in a legal document: "We also affirm the correctness of Instructions 50 and 51 which as Judge Evans states told the jury that they were to find the defendant guilty if they found he performed any one of the treasonable overt acts submitted to which two witnesses had testified. As long as each of the submitted acts were attested to by two witnesses and were sufficient as acts of treason the instruction is perfectly correct. That was our belief in the trial court and that is our belief now." Assuming that the word "attested" in the second sentence of this paragraph means proved, then the paragraph as a whole carries the inescapable and absurd meaning that the jury could convict upon proper proof of one act, providing 1917 it was also determined, in some unknown manner and by some undisclosed authority, that the other eleven acts were also proven in the manner required by the Constitution.

The answer also states: "So that there be no misunderstanding we emphatically state that we believe it to be a correct principle of law that proof of one or more overt acts by the direct testimony of two witnesses is sufficient to authorize a conviction for treason." The answer then proceeds to contradict this statement. Referring to the concession made in the government's supplemental brief, the answer states: "We stated, in substance, only that there must be direct proof by two witnesses to each treasonable overt act submitted to the jury * * *. It was our belief that, in the light of those instructions * * * and in the light of the general verdict the submission of a * * * unproven act might (in the brief it was the word 'would' and not 'might') require a reversal by the court." I admit my inability to follow a contention so patently preposterous. By these two statements we are told that it is the government's position that proof of one of the submitted overt acts by the direct testimony of two witnesses is sufficient, but that unless all of the submitted overt acts are proven by the direct testimony of two witnesses a reversal is required.

I do not withdraw from the view that the government tried the case on one theory and presented it to this court on another. The record and the answer filed to the petition for rehearing make that conclusion inescapable. The law on this feature of the case either is that proper proof of one act is sufficient or that proper

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If this assertion be correct, it is pertinent to observe, even though of minor importance, that it stamps government's counsel as men of tremendous prophetic vision. They must have anticipated the holding of the Supreme Court in the Cramer case, otherwise, that decision alone would have necessitated a shifting of position. As already pointed out, government's counsel so recognized in its supplemental brief filed in this court.

proof must be made as to all of the submitted acts. There can be no middle ground.

If the law requires proper proof as to all the submitted overt acts, as I think it does and as the government conceded in this court, a reversal is required even though all of such submitted overt acts have been properly proven. (As originally shown, I disagree with the conclusion of the majority that all of the submitted overt acts were properly proven.) This is so for the reason that the case was tried and submitted to the jury on the theory that proper proof of one act was sufficient to authorize a conviction. If proper proof of all the acts is required, then the theory on which the case was submitted to the jury is erroneous, and prejudicially so.

1948 I would allow the petition for rehearing and reverse the judgment.

1950 In the United States Circuit Court of Appeals for the Seventh Circuit

[Title omitted.]

Petition to stay mandate

Filed Jan. 26, 1946

May it please the Court:

Hans Max Haupt, defendant-appellant, by Paul A. F. Warnholtz and Frederick J. Bertram, his attorneys, respectfully petitions this Honorable Court for an order to stay the Mandate herein on the grounds that petitioner is going to apply to the Supreme Court of the United States for a Writ of Certiorari to review the decision of this Honorable Court. Petitioner further states that he may file his own appearance in connection with such proceedings, unless his attorneys have made arrangements for admission to said Court, prior to the required date for filing such Petition. In support of said Petition, an Affidavit is hereto attached.

Respectfully submitted,

HANS MAX HAUPT,
Defendant-Appellant.
By PAUL A. F. WARNHOLTZ,
FREDERICK J. BERTRAM,
His Attorneys.

1951 *Affidavit*

Paul A. F. Warnholtz, being first duly sworn, on oath states that he is one of the attorneys of Hans Max Haupt, defendant-appellant herein; that this Honorable Court on the 20th day of December A. D. 1945, confirmed the judgment of the United

States District Court herein, and has subsequently denied a Petition for Rehearing.

Affiant further states that the defendant-appellant is going to apply to the Supreme Court of the United States for a Writ of Certiorari, to review the decision of this Honorable Court; that said proceedings will be filed in forma pauperis, and that it is anticipated that the petitioner will file his own appearance in connection with said Petition for a Writ of Certiorari.

PAUL A. F. WARNHOLTZ.

Subscribed and sworn to before me this 25th day of January A. D. 1946.

[SEAL] ROBERT CORDEAU,
Notary Public.

1952 [File endorsement omitted.]

1953 In United States Circuit Court of Appeals

[Title omitted.]

Order staying issuance of mandate

January 26, 1946

On motion of counsel for appellant, it is ordered that the issuance of the Mandate of this Court in this cause be, and it is hereby, stayed pursuant to Rule 25 of the rules of this Court.

1954 In The United States Circuit Court of Appeals for the Seventh Circuit

[Title omitted.]

Praecipe and designation of contents of record upon petition for certiorari to the Supreme Court of the United States

Filed Jan. 30, 1946

To the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit:

Hans Max Haupt, defendant-appellant herein, by Paul A. F. Warnholtz and Frederick J. Bertram, his attorneys, hereby designates and requests that in preparing the transcript of the record in the above entitled cause for the Supreme Court of the United States, upon his Petition for Certiorari, that the Clerk of said United States Circuit Court of Appeals for the Seventh Circuit, include in the said transcript of record the following:

1. The complete record received from the Clerk of the District

Court of the United States for the Northern District of Illinois, Eastern Division, including therein the pleadings, bill of exceptions, proceedings of the trial, and assignment of errors on behalf of the defendant in said cause.

2. Order of the United States Circuit Court of Appeals for the Seventh Circuit, granting leave to defendant to prosecute his appeal in forma pauperis, etc., entered in said cause on June 20, 1944.

3. Supplemental brief, entitled "Memorandum of Authorities," filed in your office on behalf of the Government by United
1955 States Attorney J. Albert Woll, on, to wit, the 26th day of October A. D. 1945.

4. Opinion and the judgment of the Honorable United States Circuit Court of Appeals for the Seventh Circuit, and dissenting opinion of the Honorable Justice J. Earl Major.

5. Order entered in said cause denying defendant's Petition for Rehearing, and copy of dissenting opinion of the Honorable Justice J. Earl Major, to ruling upon Petition for Rehearing.

6. Petition of defendant to stay mandate pending Certiorari proceedings in the United States Supreme Court.

7. Order staying mandate, entered in said cause on January 26, 1946.

8. Copy of this Praecipe and Designation of Contents of Record for Certiorari proceedings.

9. Clerk's Certificate to record.

HANS MAX HAUPT,
Defendant-Appellant herein.

By PAUL A. F. WARNHOLTZ,
FREDERICK J. BERTRAM,
Attorneys for said Defendant-Appellant.

1957 In the United States Circuit Court of Appeals for the Seventh Circuit

[Title omitted.]

Supplemental designation of contents of record requested by plaintiff-appellee

Filed Feb. 4, 1946

To the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit:

The United States of America, Plaintiff-Appellee herein, by J. Albert Woll, United States Attorney, hereby designates and requests that in preparing the Transcript of the Record in the

above entitled cause for the Supreme Court of the United States, upon the Defendant-Appellant's Petition for Certiorari, the Clerk of said United States Circuit Court of Appeals for the Seventh Circuit, include in the said Transcript of Record the following, in addition to that material designated by the Defendant-Appellant:

1. Defendant-Appellant's Petition for Rehearing in the above cause filed in the Office of the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit on about December 31, 1945; and

2. Printed Answer to Defendant's Petition for Rehearing filed by the United States of America in the Office of the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit on January 11, 1946.

UNITED STATES OF AMERICA,
Plaintiff-Appellee herein,
By J. ALBERT WOLL,
United States Attorney.

1958 [File endorsement omitted.]

1959 [Clerk's certificate to foregoing transcript omitted in printing.]

1960 Supreme Court of the United States

Order granting motion for leave to proceed in forma pauperis

May 27, 1946

On consideration of the motion for leave to proceed in forma pauperis in this case,

It is ordered by this Court that the said motion be, and the same is hereby, granted.

Mr. Justice JACKSON took no part in the consideration or decision of this motion.

1961 Supreme Court of the United States

Order allowing certiorari

Filed May 27, 1946

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. The Court directs that the expense of printing the record in this case be paid by the United States pursuant to 28 U. S. C., sec. 832.

And it is further ordered that the duly certified copy of the

transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice JACKSON took no part in the consideration or decision of this application.

[Endorsement on cover:] In forma pauperis. Enter petitioner pro se. File No. 50693. U. S. Circuit Court of Appeals, Seventh Circuit. Term No. 49. Hans Max Haupt, Petitioner vs. The United States of America. Petition for a writ of certiorari and exhibit thereto. Filed February 28, 1946. Term No. 49 O. T. 1946.

U. S. GOVERNMENT PRINTING OFFICE 1946

FILE COPY

FILED
FEB 28 1945

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1945

No. 900 49

HANS MAX HAUPT,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE SEVENTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

HANS MAX HAUPT,
Pro Se.

PAUL A. F. WARNHOLTZ,
FREDERICK J. BERTRAM,
111 W. Washington Street,
Chicago 2, Illinois,
Of Counsel for Petitioner.

The Schaffer Press, Inc.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

No. .....

HANS MAX HAUPT,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable, The Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Hans Max Haupt, respectfully shows unto the Court as follows:

That he is a resident of the County of Cook and State of Illinois, and is a citizen of the United States of America by naturalization.

That on June 14, 1944, he was sentenced by the District Court of the United States for the Northern District of

Illinois, Eastern Division, upon a judgment of conviction, to imprisonment for life, and to pay a fine of Ten Thousand Dollars ($10,000) and costs, under an indictment charging the crime of treason.

That on appeal from said judgment of said District Court, the Circuit Court of Appeals for the Seventh Circuit, on December 20, 1945, affirmed the said judgment.

That on January 24, 1946, the said Circuit Court of Appeals denied a petition for rehearing filed in said cause.

(A)

SUMMARY STATEMENT OF THE MATTER INVOLVED.

The petitioner, Hans Max Haupt, defendant below, was indicted for the crime of treason under an indictment filed in Court on February 25, 1944 (Bill of Exceptions 1687-1700). The jury returned a verdict finding the defendant "guilty as charged in the indictment", upon which the Court rendered judgment against the defendant, and the defendant was sentenced on June 14, 1944 to life imprisonment, and to pay a fine of Ten Thousand Dollars ($10,000.00) (Bill of Exceptions 1677-1683). Defendant appealed from said judgment and sentence to the United States Circuit Court of Appeals for the Seventh Circuit, which affirmed the said judgment and sentence on December 20, 1945, and denied defendant's petition for rehearing on January 24, 1946.

The indictment specified twenty-nine alleged "overt acts," which were charged to have been done by the defendant "in the prosecution, performance and execution of said treason" (Bill of Exceptions, 1691-1700).

A demurrer to the indictment was filed on behalf of the defendant (Bill of Exceptions, 1701-1703), and said demurrer was overruled by the trial Judge (Bill of Exceptions, 1707).

A motion to quash and dismiss the indictment was filed on behalf of the defendant (Bill of Exceptions, 1716-1719), and said motion was denied by the Court (Bill of Exceptions, 1720).

At the conclusion of the Government's case, the defendant made and presented a written motion for a directed verdict generally and also specifically as to each of the "overt acts" charged in the indictment (Bill of Exceptions, 1728-1730), all of which motions were denied by the Court (Bill of Exceptions, 1731). The defendant thereupon introduced certain evidence in his defense, and at the conclusion of all of the evidence in the case, the defendant renewed his motion for a directed verdict generally and specifically as to each of the "overt acts" charged in the indictment, which motions were again overruled by the Court (Bill of Exceptions, 1735).

The defendant, at the conclusion of the Government's evidence in the case, and again at the conclusion of all of the evidence in the case, made and presented certain written motions to strike and exclude from the evidence certain testimony of witnesses introduced on behalf of the Government and for instructions to the jury not to consider such testimony, all of which motions were overruled by the Court (Bill of Exceptions, 1731-1739).

Motions, in writing, for a new trial (Bill of Exceptions, 1826-1834) and in arrest of judgment (Bill of Exceptions, 1835-1838) were made on behalf of the defendant, and both of said motions were overruled by the Court.

The Bill of Exceptions consists of four volumes, the first three volumes of which contain the full stenographic transcript of the proceedings of the trial (with the testimony in question and answer form).

(B)

STATEMENT AS TO JURISDICTION.

This Court has jurisdiction to review this cause under Section 240-a of the Judicial Code, as amended, 28 U.S.C. paragraph 347 (a), and Section 688, Title 18, Criminal Code and Criminal Procedure, and Rules 11, 12 and 13 of Criminal Procedure of this Court.

The order and judgment of the Circuit Court of Appeals became final on January 24, 1946, on which date it denied the petition for rehearing.

(C)

QUESTIONS PRESENTED.

1. Were the overt acts which were submitted to the jury each proved by the testimony of two direct witnesses as to the same overt act, as required by the Constitution? (By reason of Instructions Nos. 50 and 51 of the Court's Charge to the Jury and the return of a *general* verdict of guilty, it is conceded in the opinion of the Circuit Court of Appeals, and was also conceded in the Government's supplemental brief, filed October 26, 1945, that failure of proof, or legal insufficiency of any one of the submitted overt acts charged in the indictment, would require a reversal of the case.)

2. May evidence, which according to all decisions constitutes *circumstantial evidence*, be considered *direct evi-*

dence for the purpose of satisfying the constitutional two-witness requirement, when a charge of treason is involved?

3. Did the Circuit Court of Appeals perform the functions of the jury in weighing the evidence as to each submitted overt act, for the purpose of overcoming the effect of Instructions Nos. 50 and 51, which required proof of *one* overt act only, and which were apparently erroneous in view of the general verdict rendered?

4. Were the acts charged in the indictment legally sufficient to constitute the crime of treason? Did the Court err in overruling the defendant's demurrer to the indictment? (Petitioner contends that clearly some of the twelve overt acts charged in the indictment and submitted to the jury were legally insufficient to support a conviction for treason.)

5. Was petitioner denied a fair trial by reason of the admission of incompetent evidence? (Petitioner contends that incompetent evidence was received against him which was prejudicial to his right to a fair trial.)

6. Did the Court improperly refuse to receive in evidence the Statute of the State of Illinois relating to accessories after the fact, offered on behalf of the petitioner?

7. Was the petitioner denied a fair trial by reason of the giving of improper and erroneous instructions in the Court's Charge to the Jury and by reason of the refusal of the Court to give proper instructions requested on behalf of the defendant? (Petitioner assigns error in the giving of instructions Nos. 8, 9, 13, 26, 36, 39, 40, 41, 47, 49, 50, 51, 53, 54, 63, 55, 56, 57, 58, 60, and 61, and in the refusal to give defendant's requested instructions Nos. D-2, D-6, D-23, D-7, D-8, D-15, D-16, D-17, D-19, D-21, D-22, D-27, D-28, D-29 and D-30.)

8. Was the petitioner deprived of a fair and impartial trial by reason of improper, inflammatory and prejudicial argument to the jury by the Government's attorneys, appealing to passion, prejudice, patriotic emotions and war hysteria?

9. Was the verdict of the jury the result of passion, prejudice, war hysteria and misapprehension of law and fact, induced by errors committed in the trial of the case?

10. Was the petitioner deprived of a fair trial by reason of the constraint and exhaustion of the jury, resulting from twenty-eight hours of continuous deliberation without sleep and without accommodation for rest and sleep?

11. Was petitioner deprived of a fair trial by the reading to the jury of the testimony of two Government witnesses (Hirsh and Robe) and of one defense witness (Benedict Short), which occurred over petitioner's objections twenty-four hours after the submission of the case and the retirement of the jury to consider their verdict?

12. Can a general verdict of "guilty as charged in the indictment" sustain a conviction in the case at bar, in view of instructions Nos. 50 and 51, which are to the effect that a verdict of guilty may be rendered on basis of the commission of any one of the twelve submitted overt acts?

13. Did the Circuit Court of Appeals fail to apply the principles of law laid down by this Honorable Court in the case of *Cramer* v. *The United States*, 65 S. Ct. 918, requiring a reversal of the case at bar?

(D)

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT AND SPECIFICATION OF ERRORS.

1. The Indictment.

The alleged offenses charged in the indictment do not constitute acts of treason within the meaning of and as defined in the Constitution of the United States, and as stated in Section 1, Title 18, U.S.C.

Twelve of the alleged overt acts were submitted to the jury, and seventeen were "withdrawn." Of the overt acts submitted to the jury, overt acts 10 and 11 (Group One) charge the act of accompanying Herbert Haupt for the purpose of securing employment; overt acts 12, 17, 20, 21, 22 and 23 (Group Two) charge harboring and sheltering Herbert Haupt; overt acts 13, 14, 15 and 16 (Group Three) charge accompanying Herbert Haupt to an automobile sales agency, arranging, making payment and completing arrangements for the purchase of an automobile for Herbert Haupt. Each of said alleged acts is a commonplace, insignificant and colorless action. There is nothing treasonable in the nature of these actions, and we contend that some of these acts are clearly insufficient in law to support a conviction. The "withdrawn" overt acts were likewise insufficient and demurrable.

The trial Court erred in overruling the defendant's demurrer to the indictment herein, and the Circuit Court of Appeals erred in affirming the judgment of the trial Court herein.

2. Errors in Admission of Evidence.

The Court erred in receiving in evidence incompetent and improper testimony and exhibits prejudicial to the rights of the defendant; and the Court further erred in denying the defendant's several motions to exclude the same from the consideration of the jury.

(a) *Concerning conversations and occurrences which happened from one to six years prior to the time of overt acts charged in the indictment, admitted in evidence "to prove the intent with which the overt acts were committed"*:

The Court erred in admitting in evidence the testimony of witnesses William Schroeder, Mrs. Louis Fishman, Hans Poppe and Barbara Kluczyk, regarding *pre-war conversations* alleged to have been had with the defendant, each being a separate conversation related by only one witness.

(b) *Concerning oral statements and alleged admissions made by the defendant, while in custody, which admissions were inadmissible under the Constitution as the same were not made in open Court*:

The Court erred in admitting in evidence the testimony of FBI Agents Hirsh and Robe and of the convicts Majerczak and Hamby regarding oral conversations of the defendant, which constituted admissions or confessions *not made in open Court* with respect to overt acts charged in the indictment, contrary to the provision of the Constitution that "no person shall be convicted unless on the testimony of two witnesses to the same overt act, or on confession in open Court."

(c) *Concerning occurrences and conversations which took place outside of the presence of the defendant*:

The testimony of the witness Ernest Peter Burger regarding conversations and instructions orally given, all outside of the presence of the defendant, was inadmissible under the hearsay evidence rule, and the Court erred in overruling defendant's motion to exclude the testimony. The Court further erred in permitting said witness to testify, over defendant's objections, to the movements of the witness himself and of his own group, after the departure of Herbert Haupt, and outside of his presence. The testimony of Burger was admitted for the sole purpose of proving the enemy status of Herbert and not as evidence against the defendant; and yet, after it was so received, not only the jury, but the Circuit Court of Appeals, were unable to refrain from regarding it as evidence against the defendant to establish a treasonable motive for an otherwise colorless act of the defendant. (See C. C. A. opinion, pages 32 and 33.)

The Court also erred in admitting the testimony of witnesses William Leibl, Joseph William Haas, Carl Eggert and Dora Eggert, relating to hearsay evidence and matters occurring outside of the presence of the defendant.

(d) *Concerning improper examination and intimidation of the witness, Gustave Zermer, by the Government's attorney, and improper offer of testimony by the prosecution regarding overt acts charged in the indictment with knowledge on the part of the prosecution that two witnesses to such act would not be produced, as required by the Constitution*:

The Court erred in overruling objections of the defendant's counsel to the method of examination and intimidation of the witness, Gustave Zermer, which was prejudicial to the right of the defendant to a fair trial. It was improper for the prosecution to offer the testimony of *one witness* in support of overt acts which they knew could not be proved by two witnesses and would have to be withdrawn, and when the only purpose of such testimony could be its effect upon the jury in connection with the proof of the overt acts to be submitted to the jury.

(e) *It was error for the Court to receive in evidence, and to submit to the jury, testimony relating to "withdrawn" overt acts for consideration by the jury in determining the question of the intent with which the defendant may have committed any of the "submitted" overt acts charged in the indictment.*

Withdrawn overt acts Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 18, 19, 24, 25, 26, 27, 28 and 29, were not, nor were any of them, supported by the testimony of two witnesses. It was improper to charge the jury that they could use any evidence relating to any such acts to obtain a conviction upon any overt act submitted to the jury. The Constitution peremptorily states that "no person shal be convicted of treason unless on the testimony of two witnesses to the same overt act or on confession in open court." It was improper for the prosecution to offer the testimony of *one witness* in support of overt acts which they knew could not be proved by two witnesses and would have to be withdrawn, and when the only purpose of such testimony was to create prejudice against the defendant with respect to the overt acts to be submitted, and which submitted acts were of an innocent nature in themselves.

3. Error in Refusing to Receive Evidence.

The Court improperly refused to receive in evidence the Statute of the State of Illinois relating to accessories after the fact, offered on behalf of the defendant.

The Illinois Statute was pertinent and material to the defense of the defendant to the overt acts charging him with harboring and sheltering his son. We contend that under the Federal Statutes, U. S. Code, Title 28, Sections 725 and 729, the Statutes of the State, wherein a Federal trial is held, are to be regarded as rules of decision and controlling when not inconsistent with the Constitution and laws of the United States; and we further contend that the Illinois statute, i.e., Chap. 38, Div. II, Sec. 4, para. 584, is not inconsistent with the Constitution and laws of the United States.

4. Sufficiency of the Evidence.

(a) There was not sufficient evidence to submit the case to the jury, and the Court should have directed a verdict of "not guilty" as to each of the "submitted overt acts," (i.e., overt acts Nos. 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22 and 23).

(b) The Court erred in overruling the defendant's motion for a new trial.

(c) The Court erred in overruling the defendant's motion in arrest of judgment.

5. Instructions Given and Refused.

(a) The Court committed reversible error in the giving of its charge and instructions to the jury.

The defendant assigns error in the giving of the following numbered instructions in the Court's Charge to the Jury:

Instruction Nos. 9, 13, 26, 36, 39, 40, 41, 47, 50, 51, 53, 54, 55, 56, 57, 58, 60, 61

(b) The Court erred in refusing to give to the jury certain instructions requested on behalf of the defendant, to-wit:

Refused Instruction: D-2, D-6, D-23, D-7, D-8, D-15, D-16, D-17, D-19, D-21, D-22, D-27, D-28, D-29 and D-30.

(c) The Charge to the Jury, as a whole, failed to instruct the jury properly upon the defense theory that acts done by defendant merely to aid and comfort his son as an individual, without intention to aid the enemies of the United States, would not amount in law to the crime of treason; and the Court's Charge to the Jury did, in fact, deprive the defendant of such defense.

(See Instructions Nos. 53 and 54, which nullify and cancel out the Court's proper Instruction No. 37 on this subject).

(d) The Court erred in sending into the jury room for the consideration of the jury a copy of the indictment, containing as it did a prejudicial and hurtful narrative, made up of many allegations of prejudicial matter irrelevant to the alleged overt acts of the defendant, and made up of many allegations concerning alleged overt acts upon which there was no evidence, or insufficient evidence, and which were withdrawn from the jury.

(e) The Court erred in sending into the jury room for the consideration of the jury, the Court's Charge to the Jury, in typewritten form, thereby accentuating all the

errors contained in the instructions in said Charge to the Jury, and particularly the errors contained in paragraphs 53, 54 and 63 of said Charge, which were inconsistent with and nullified the effect of the instruction in paragraph 37 of said Charge to the Jury.

6. Prejudicial Argument by Government's Counsel.

The Government's attorneys in their arguments to the jury, made inflammatory, prejudicial, impertinent, irrelevant and improper argument and comments not founded upon evidence in the case, but appealing to passion, prejudice, patriotic emotions and war hysteria, and depriving the defendant of a fair and impartial trial.

7. The Verdict of the Jury.

(a) The verdict of the jury was the result of passion, prejudice, war hysteria and misapprehension of law and fact by the jury, induced by erroneous instructions and by improper argument to the jury and other prejudicial errors committed in the trial of the case.

(b) The verdict was further induced by the physical constraint and exhaustion of the jury resulting from twenty-eight hours of continuous deliberation of the jury without sleep, and without accommodation for rest and sleeping.

(c) The verdict was further induced by the erroneous and improper reading to the jury, over defendant's objections and twenty-four hours after the submission of the case to the jury and their retirement to consider their verdict, of the testimony of two Government witnesses (Hirsh and Robe) and of one defense witness (Benedict Short).

8. The General Verdict.

The sentence herein cannot rest upon a general verdict of "guilty as charged in the indictment" without any finding by the jury as to the particular overt act, or acts, of which the defendant was guilty.

The verdict in this case was a general one of guilty, without special findings as to the acts on which it rests. Since it is not possible to identify the grounds on which the defendant was convicted, the verdict must be set aside if any one of the separable acts submitted was legally insufficient, or insufficiently proved by two witnesses, as required by the Constitution. There was a failure of proof, not only upon the overt acts "withdrawn from the jury," but also upon overt acts "submitted to the jury" as possible acts of treason. Also, it is plain that a number of the submitted overt acts are legally insufficient to constitute treason.

(E)

PRAYER OF PETITION.

Wherefore, your petitioner respectfully prays that the writ of certiorari may be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Seventh Circuit, commanding that Court to certify and transmit to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, Number 8607, *United States of America* v. *Hans Max Haupt*, that the judgment of said Court may be reversed and that the judgment of conviction of the Dis-

trict Court of the United States for the Northern District of Illinois, Eastern Division, may be reversed by this Honorable Court; that your petitioner may have leave to proceed herein *in forma pauperis,* in accordance with his motion heretofore filed herein; and that your petitioner may have such other and further relief in the premises as this Honorable Court may deem just and proper; and your petitioner will ever pray.

Hans Max Haupt

Hans Max Haupt, *Petitioner, Pro se.*

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BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

I.

THE OPINION BELOW.

The opinion of the United States Circuit Court of Appeals rendered in this cause, together with the dissenting opinion of Judge Major, is found in the transcript of the Circuit Court of Appeals proceeding at page 9. A further dissenting opinion was written by Judge Major to the order denying the Petition for Rehearing in the Court of Appeals. The case is reported as *United States* v. *Hans Max Haupt* in 152 Fed. (2d) 771.

II.

JURISDICTION.

This Court has jurisdiction to review this cause under Section 240 (a) of the Judicial Code, as amended, 28 U.S.C., Paragraph 347 (a), and Section 688, Title 18, Criminal Code and Criminal Procedure, and rules 11, 12 and 13 of Criminal Procedure of this Court.

The order and judgment of the Circuit Court of Appeals became final on January 24, 1946, on which date it denied the Petition for Rehearing.

III.

STATEMENT OF THE CASE.

The petitioner was charged with the crime of treason in an indictment which specified twenty-nine (29) alleged overt acts of treason, in giving aid and comfort to his son, Herbert Haupt, an enemy of the United States. Twelve of these alleged overt acts were submitted to the jury as "possible overt acts of treason."

The overt acts submitted to the jury in this case, charge as treason three groups of acts, namely:

1. Accompanying Herbert Haupt for the purpose of assisting him in securing employment (Overt acts 10 and 11);
2. Harboring and sheltering Herbert Haupt (Overt acts 12, 17, 20, 21, 22 and 23);
3. Accompanying Herbert Haupt to an automobile sales agency, arranging and paying for the purchase of an automobile for Herbert Haupt (Overt acts 13, 14, 15 and 16).

The text of said overt acts submitted to the jury is set out in the appendix to this brief.

The Government's evidence, offered in support of the submitted overt acts, as well as that which was offered in support of the alleged overt acts which were "withdrawn" from the jury, could not be set out fairly or properly in any concise statement, nor could the expense of printing a fair statement of the evidence in the case be met by the petitioner.

(The Government's evidence is set forth on pages 5 to 69, inclusive, in the appellant's original brief filed in the United States Circuit Court of Appeals, and the defendant's evidence is set forth on pages 69 to 77, inclusive, of said appellant's brief. The propositions of law and authorities relied upon, including a consideration of the questions here presented, are contained in said brief on pages 98 to 244, inclusive.)

Petitioner, in amplification of this statement, and in support of his petition herein, submits herewith ten copies of the brief filed on his behalf in the said Circuit Court of Appeals.

IV.

SPECIFICATION OF ERRORS.

The United States Circuit Court of Appeals for the Seventh Circuit, erred in affirming the judgment of the District Court.

The trial Court erred (1) in overruling defendant's demurrer to the indictment; (2) in receiving incompetent and improper evidence; (3) in refusing to receive proper evidence offered on behalf of the defendant; (4) in overruling defendant's motions for a directed verdict at the close of the Government's case and again at the close of all of the evidence in the case; (5) in giving erroneous and improper instructions in its charge to the jury and in refusing to give proper instructions requested on behalf of the defendant; (6) in permitting improper prejudicial argument by the Government's attorneys; (7) in refusing to set aside the verdict of the jury and to grant a new trial by reason

of the errors committed in the trial of the case to the prejudice of the right of the defendant to a fair and impartial trial; and (8) in entering judgment upon a general verdict of "guilty as charged in the indictment", where it was not possible to identify the grounds, or the particular alleged overt act or acts of which the jury found the defendant guilty, and where there was a failure of proof "by two witnesses to the same overt act", not only as to the overt acts "withdrawn from the jury", but also as to overt acts "submitted to the jury as possible acts of treason" and where certain, if not all, of said submitted overt acts were legally insufficient to constitute the crime of treason.

V.

SUMMARY OF ARGUMENT.

A.

The Circuit Court of Appeals failed to apply the principles of law laid down by the United States Supreme Court in the case of Cramer v. United States, 65 S. Ct. 918, requiring a reversal of the case at bar.

B.

The Circuit Court of Appeals (i.e., the opinion by his Honor, Judge Evans) erred in assuming the functions of a jury. It erred in trying to prove that each and every one of the twelve submitted overt acts was proved in constitutional manner (and beyond a reasonable doubt), in an effort to show that the erroneous instructions to the jury, Nos. 50 and 51, were not prejudicial to the defendant, notwithstanding that a general verdict was returned by the jury and therefore, it could not be determined of which of the overt acts the jury found (beyond a reasonable doubt) the defendant was guilty.

C.

Incompetent evidence was received, and considered, and relied upon (1) by the trial Court, (2) by the jury, pursuant to erroneous instructions of the Court, and (3) by the Circuit Court of Appeals, to establish treasonable intent on the part of the defendant. The petitioner was denied a fair trial by reason of the admission of such incompetent evidence.

D.

The acts charged in the indictment were legally insufficient to constitute the crime of treason. The defendant's demurrer to the indictment should have been sustained.

E.

The trial Court improperly refused to receive in evidence the Statute of the State of Illinois relating to accessories after the fact, offered on behalf of the defendant.

F.

There was not sufficient evidence to submit the case to the jury, and the trial Court should have directed a verdict of "not guilty" as to each of the "submitted overt acts" (i.e., overt acts Nos. 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22 and 23).

G.

Petitioner was deprived of a fair and impartial trial by reason of improper, inflammatory and prejudicial argument to the jury by the Government's attorneys, appealing to passion, prejudice, patriotic emotions and war hysteria.

H.

The trial Court committed reversible error in the giving of its charge and instructions to the jury, and in refusing to give proper instructions requested on behalf of the defendant.

I.

Petitioner was deprived of a fair trial by reason of the constraint and exhaustion of the jury, resulting from 28 hours of continuous deliberation without sleep, and without accommodation for rest and sleep.

J.

The petitioner was deprived of a fair trial by the reading to the jury of the testimony of two Government witnesses (Hirsh and Robe) and one defense witness (Benedict Short), which was allowed over petitioner's objections twenty-four (24) hours after the submission of the case and the retirement of the jury to consider their verdict.

K.

The verdict of the jury wa the result of passion, prejudice, war hysteria and misapprehension of law and fact induced by the errors committed in the trial of the case.

L.

The verdict in this case was a general one of "guilty as charged in the indictment", without special findings as to the act or acts on which it rests. Since it is not possible to identify the grounds on which the defendant was convicted, the verdict must be set aside if ANY of the separable acts submitted was legally insufficient or was insufficiently proved by two witnesses as required by the Constitution. (See Cramer case.) There was a failure of proof, not only upon the overt acts "withdrawn from the jury", but also upon overt acts "submitted to the jury as possible acts of treason." There were, also, submitted overt acts, which were legally insufficient.

VI.

ARGUMENT.

MAY IT PLEASE THE COURT:

A.

The Circuit Court of Appeals failed to apply the principles of law laid down by the United States Supreme Court in the case of Cramer v. United States, 65 S. Ct. 918, requiring a reversal of the case at bar.

JUDGE MAJOR'S DISSENTING OPINION.

His Honor, Judge Major, in his dissenting opinion herein, makes the following comment regarding the opinion written by Judge Evans:

> "The opinion by which this judgment is to be affirmed is a striking illustration that the fear entertained by the makers of the Constitution was well founded. The reasoning of the opinion is, in my judgment, so grievously and palpably erroneous that I find myself compelled to dissent. The opinion states that it is 'unfortunate that the trial occurred before the decision in Cramer v. United States.' Presumably this means that the trial Court would have tried the case on a different theory if it had had the benefit of that decision. I doubt not that such would have been the case. In this connection, it can be said with equal propriety that it is even more unfortunate that the majority of this Court in their zeal to affirm this conviction have been faced with the law of treason as announced in that decision.
>
> Defendant was entitled to have the question of his guilt determined by a jury in accordance with the law and the Constitution pertaining to treason. As I view

the matter, the function of this Court is confined solely to the question as to whether his guilt was thus determined. If not, the judgment should be reversed, irrespective of any personal opinion we may entertain on that issue. Any other view amounts to usurpation of the province of the trial Court and the jury. If this view be correct, the conclusion to affirm receives little, if any, support from the voluminous recitals of the opinion designed to show that the defendant is guilty." • • •

"In my opinion, the constitutional provision on treason has been nullified and the decision of the Supreme Court in the Cramer case (both the majority and minority opinions) emasculated. This is so, notwithstanding that the opinion is replete with numerous protestations to the contrary.

I would reverse the judgment."

FURTHER COMMENT OF JUDGE MAJOR IN HIS DISSENT TO DENIAL OF PETITION FOR REHEARING.

"If the law requires proper proof as to all the submitted overt acts, as I think it does and as the Government conceded in this Court, a reversal is required even though all of such submitted overt acts have been properly proven. (As originally shown, I disagree with the conclusion of the majority that all of the submitted overt acts were properly proven.) This is so for the reason that the case was tried and submitted to the jury on the theory that proper proof of one act was sufficient to authorize a conviction. If proper proof of all the acts is required, then the theory on which the case was submitted to the jury is erroneous, and prejudicially so.

I would allow the petition for rehearing and reverse the judgment."

Hereafter, we dwell more fully on this subject matter of the Circuit Court of Appeals usurping the functions of a jury, by condoning the erroneous instructions Nos. 50 and 51 (in view of a general verdict) through a finding of its own, that the defendant committed *with treasonable intent* each and every one of the submitted overt acts.

GENERAL COMMENT ON THE OPINION OF THE CIRCUIT COURT OF APPEALS.

The appeal in the case at bar was heard before the Honorable Judges Evans, Kerner and Major of the Circuit Court of Appeals for the Seventh Circuit. Judge Kerner stated that he concurred "in affirming the judgment, but not in all that is said in the opinion." Judge Major filed a dissenting opinion. The statements or reasoning of the opinion written by Judge Evans, which are concurred in by Judge Kerner, are not ascertainable. It is difficult, therefore, to consider any particular part of the opinion of Judge Evans as being the opinion of the majority of the Court. This may also account for the fact that this case is apparently one of the few cases in the Federal Reporter which has been reported without a single law head note.

(a) *Concerning sufficiency of proof by two witnesses of overt acts 12, 20, 21, 22 and 23, charging harboring.*

It is our contention that not a single one of these overt acts has been proven by the direct testimony of two witnesses. Not a single witness saw Hans Haupt, the defendant, or Herbert Haupt, his son, inside of the Haupt apartment; being one of the six apartments located in an apartment building served by two house entrances, each entrance leading to more than one apartment.

Judge Evans, on page 26 of the original opinion, sums up the testimony of a number of persons, relating circumstances from which it could be logically inferred that Herbert Haupt was using and living in the apartment occupied by the petitioner and his wife, and then states that such testimony

> "is *direct* testimony that said son was being quartered in the father's home. To call such evidence circumstantial, rather than direct, is the extreme of tenuity. Such was not the protection intended to be accorded by the Constitution to one charged with treason, when it required the testimony of two witnesses to the same overt act. It is worthy of passing note that it is the decision in the Cramer case, not the definition found in the Constitution, which adds the necessity of '*direct* evidence.' We must, however, and do follow the Court holding."

Notwithstanding Judge Evans' contrary view, testimony to the effect that the entry or exit of Hans Haupt or Herbert Haupt was made through such apartment house entrance, can only be and does constitute merely *circumstantial evidence* and not direct evidence as to harboring of Herbert by Hans Haupt inside of his apartment. Merely by inference can it be stated that Herbert Haupt, after the entry through the apartment house entrance, went into the apartment of his father and mother, or that Hans Haupt was present in said apartment at such time or times.

It should be observed that the fact testified to by the F.B.I. Agents were merely as to *entry to the apartment building* and not as to any conduct of the defendant or of any act of "harboring" by the defendant.

> "'Direct' and 'circumstantial' evidence differ merely in their logical relations to the fact in issue. Evidence as to the existence of the fact is 'direct'. 'Circumstan-

tial" evidence is composed of facts which raise a logical inference as to the existence of the fact in issue." *United States* v. *Greene,* 146 F. 803, 824.

1 Greenleaf on Evidence, paragraph 13, defines direct evidence as being given when the thing to be proved is directly attested by those who speak from their own knowledge of its existence; circumstantial, when the thing to be proved is to be inferred from other facts satisfactorily proved. See also, *Wells, on Cir. Ev. C. 2, paragraph 1.*

The defendant's contention in the case at bar is not only that there is no *direct* proof that Herbert was actually in the Haupt apartment, the F.B.I. testimony being *circumstantial* proof, but also that there was no direct proof (save in the case of Overt Act No. 17) that the defendant himself was in the apartment *at any time when Herbert was supposed to be there.*

As was pointed out by his Honor, Judge Major, in his dissenting opinion herein (page 55):

> "Every word uttered by these witnesses which proved or tended to prove that Herbert Haupt was in the home of the defendant (the third floor apartment) on June 27, 1942, is purely circumstantial. There is not a word of direct proof in support thereof. More than that, it should not be overlooked that Hans Max Haupt and not Herbert Haupt is the defendant in this case, and there is not a scintilla of testimony, either direct or circumstantial, that the former was either in or about the apartment on this date. In fact, his name is not even mentioned by the witnesses. Just how the defendant was shown, by the direct testimony of two witnesses, to have committed this act, without even a mention of his name, is one of the several imponderabilities presented by the majority opinion."

Other than as to the occasion specified in Overt Act 17, there were no witnesses to the presence of the defendant in the apartment at the same time with Herbert, or regarding any *act of the defendant* relating to the charge of harboring Herbert.

The opinion of Judge Evans, at page 32, with respect to the "harboring and sheltering overt acts" states that "there can be little doubt that on the respective dates alleged, the son, Herbert, stayed over night in his father's home, ate meals there," etc. The probability of the fact is not the point of inquiry, but the question is whether the defendant is to be denied the benefit of the Constitutional provision that "No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act".

Here, as stated in *Cramer* v. *United States*, 65 S. Ct. 918, at page 938, "It is not relevant to our issue to appraise weight or credibility of the evidence apart from determining its constitutional sufficiency."

There being no direct evidence or testimony of two witnesses (nor even of one witness) *to acts of harboring by the accused* at the times and places charged in Overt Acts 12, 20, 21, 22 and 23, he was entitled to such a finding and to a dismissal of such charges either by the trial Court or by the Circuit Court of Appeals upon his appeal herein. As pointed out in Judge Evans' opinion, but not followed, failure of proof on *any* of the submitted overt acts requires a reversal of the case. —

(b) *Concerning sufficiency of proof by two witnesses of Overt Act No. 16, charging the making of a further payment in cash towards the purchase of an automobile and completing arrangements for the*

purchase of said automobile, and purchasing an automobile for the enemy, Herbert Haupt, on June 24, 1942:

There was but *one witness* to this alleged overt act, namely, the salesman, Farrell. It is considered by the Court, in Judge Evans' opinion, pages 17 and 18, that the testimony of the general manager, Vinson, regarding receiving money from some unspecified source, was direct testimony to the act of Hans Haupt paying over such money. However, there is no actual testimony by Vinson that he saw Hans Haupt pay over the particular money, or any money, on June 24, 1942. The Government established by definite questions put to Farrell (one witness, only), that Hans Haupt paid the sum of $405.00 on the evening of June 24, 1942, but Government's counsel avoided such questioning of the witness Vinson, who testified, as shown in the foot note on page 18 of the opinion as follows:

"Q. And you said on that occasion you didn't talk to them yourself? A. No.

Q. Did you receive the money that had been put down? A. I did.

Q. On that evening? A. Yes."

He was not asked and he did not state from whom he received the money. In fact, Vinson merely testified that he saw Hans and Herbert Haupt come into the sales room on June 24th and did not talk to them. Concerning the note mentioned in the testimony, it is clear that the same was signed on June 23rd, 1942, when the mortgage was made out, and not on June 24th, 1942.

The Overt Act No. 16, as charged in the indictment, states that on June 24th, 1942, Hans Max Haupt "made a further payment * * * and did purchase said automo-

bile for said enemy Herbert Haupt * * *." An overt act must be proved as laid by the direct evidence testimony of two witnesses. (*Cramer v. United States*, 65 S. Ct. 918.) There was no second witness who testified that he *saw* Hans Max Haupt make such payment. And there was *no second witness* who testified that Hans Haupt purchased the automobile "for said enemy Herbert Haupt." Witness Vinson testified as follows:

> "Q. Just a minute. Do you know who purchased the car? A. Yes, Hans Haupt.
>
> Q. And was there any conversation as to whether it was a car for Hans or for someone else? A. No." (Bill of Exceptions, 470.)

The act was not proved as laid and as required by the Constitution of the United States, as it was necessary for the Government to prove by two witnesses that the car was purchased *for Herbert Haupt.*

In *United States* v. *Gooding*, 12 Wheat. (25 U. S.) 473, at page 475, the Court said:

> "The case of treason stands upon a peculiar ground; there the overt acts must by statute be specially laid, and must be proved as laid."

In *United States* v. *Wilson, et al.*, 28 Fed. Cases No. 16,730, pages 699-718, at page 718, the Court said:

> "The overt act charged is the sole act of that treason which can produce conviction. It is the sole point in issue between the parties."

(c) *Concerning sufficiency of proof by two witnesses of Overt Acts Nos. 10 and 11, charging defendant with accompanying Herbert to assist him in securing re-employment by the Simpson Optical Company:*

No witness whatever offered any proof that the defendant assisted or attempted to assist Herbert Haupt to secure such employment.

On page 28, his Honor, Judge Evans, states in his opinion:

> "There can be no doubt that the father * * * sometimes volunteered information as the son's whereabouts in the interval since he left the employ of the company, or that the son had now registered for the draft, etc. This was established by the testimony of two witnesses."

Judge Evans is in error in making the foregoing statement, as *not even a single witness* present at the visits of the three Haupts at either Koch's or Grunau's home testified that Hans Haupt spoke one single word about his son's whereabouts in the interval since he left the employ of the Simpson Optical Company. And concerning Herbert's registration for the draft, only *one witness*, Mr. Koch, testified, as follows:

> "At that time Hans Haupt said, 'I sent him out this morning to the draft board and the F.B.I.'" (Bill of Exceptions, 368-373 and 421-424.)

These are the only words uttered by Hans Haupt according to the testimony, relating to overt acts Nos. 10 and 11.

B.

The Circuit Court of Appeals (i.e., the opinion by his Honor, Judge Evans) erred in assuming the functions of a jury. It erred in trying to prove that each and every one of the twelve submitted overt acts was proved in constitu-

tional manner (and beyond a reasonable doubt), in an effort to show that the erroneous instructions to the jury, Nos. 50 and 51, were not prejudicial to the defendant, notwithstanding that a general verdict was returned by the jury and therefore, it could not be determined of which of the overt acts the jury found (beyond a reasonable doubt) the defendant was guilty.

Judge Evans, in his opinion on page 45, states:

> "The most seriously argued objection to the charge arises out of instructions 50 and 51. In essence, these instructions told the jury that they were to find the defendant guilty if they found he performed any *one* of the treasonable overt acts submitted, to which acts two witnesses had testified. A plurality of overt acts was submitted. A general verdict was returned. The Cramer case (in footnote 45), 325 U. S. 1, 36, states a general verdict must be set aside 'if any of the separable acts submitted was insufficent.'
>
> "If it were not for the fact that our study of the evidence as summarized above supports the jury's verdict of guilt on *any* or all of the overt acts submitted, reversal would on this theory follow. We have reached the conclusion that each of the overt acts submitted to the jury was legally (or constitutionally) sufficient."

The error of the Circuit Court of Appeals opinion in this regard is most clearly and effectively demonstrated in the dissenting opinion of his Honor, Judge Major, which we take the liberty of quoting, in part, as follows:

> "Defendant was entitled to have the question of his guilt determined by a jury in accordance with the law and the Constitution pertaining to treason. As I view the matter, the function of this Court is confined solely to the question as to whether his guilt was

thus determined. If not, the judgment should be reversed, irrespective of any personal opinion we may entertain on that issue. Any other view amounts to usurpation of the province of the trial Court and the jury. If this view be correct, the conclusion to affirm receives little, if any, support from the voluminous recitals of the opinion designed to show that the defendant is guilty. * * * An affirmance under such a situation means that the defendant has had a trial by this Court on the acts submitted but not a trial by jury. * * * In order to sustain the conviction on the former theory, it was held that all of the submitted overt acts had been properly proven by the direct testimony of two witnesses. In doing so, however, the opinion treats and holds as direct proof that which is purely circumstantial. In sustaining the Court's instructions to the jury, the theory on which the case was presented to this Court, including the express concession of Government's counsel, has been repudiated. I am unable to join in a result brought about by such inconsistent and illogical reasoning. In my opinion, the constitutional provision on treason has been nullified and the decision of the Supreme Court in the *Cramer* case (both the majority and minority opinions) emasculated. This is so, notwithstanding that the opinion is replete with numerous protestations to the contrary. I would reverse the judgment."

It is evident from Judge Major's comments and references to the opinion of the Court by Judge Evans, that the majority of the Circuit Court of Appeals (Judges Evans and Kerner) misconceived the function of the Appeals Court with respect to determining the defendant's guilt from the record.

This Honorable Court had occasion to re-iterate and clarify the rule regarding the respective functions of the

—Court of Appeals and of the jury in the recent case of *Bollenbach* v. *United States*, No. 41, October Term, 1945, opinion delivered January 28, 1946, where Mr. Justice Frankfurter, who delivered the opinion of the Court, said on page 6:

> "In view of the Government's insistence that there is abundant evidence to indicate that Bollenbach was implicated in the criminal enterprise from the beginning, it may not be amiss to remind that the question is not whether guilt may be spelt out of a record, but whether guilt has been found by a jury according to the procedure and standards appropriate for criminal trials in the federal courts. * * * In view of the place of importance that trial by jury has in our Bill of Rights, it is not to be supposed that Congress intended to substitute the belief of appellate judges in the guilt of an accused, however justifiably engendered by the dead record, for ascertainment of guilt by a jury under appropriate judicial guidance, however cumbersome that process may be."

C.

Incompetent evidence was received, and considered, and relied upon (1) by the trial Court, (2) by the jury, pursuant to erroneous instructions of the Court, and (3) by the Circuit Court of Appeals, to establish treasonable intent on the part of the defendant. The petitioner was denied a fair trial by reason of the admission of such incompetent evidence.

It is a remarkable fact, but true, nevertheless, as we believe, *that incompetent evidence was used exclusively, or almost so*, by the trial Court, by the jury (under erroneous instructions) and by the Circuit Court of Appeals in its opinion, *to establish the essential element of treasonable intent and purpose on the part of the defendant.*

The sources used and relied upon (improperly) to convict the defendant and to establish his treasonable intent were (1) the so-called background evidence, consisting of pre-war statements of the accused, testified to by single witnesses; (2) withdrawn overt acts testified to by one witness, or in some cases by no witness at all; (3) testimony of witnesses (Hamby, Majerczak, Hirsh and Robe) concerning alleged admissions or confessions of the accused *which were not made in open court;* and (4) testimony of witness Burger and Government exhibits, both of which were received in evidence for the sole and exclusive purpose of showing that Herbert Haupt was and came to the United States as an enemy of our country.

1. The so called background evidence, consisting of *pre-war* statements alleged to have been made by the accused, was testified to, in separate instances, by witnesses Schroeder, Fishman, Poppe and Barbara Kluczyk. It was entirely irrelevant to the overt acts alleged in the indictment and was so remote in time that some of the alleged statements of the accused occurred as much as six years prior to the time of the overt acts charged in the indictment. The statements were withal of a highly prejudicial nature, which could not help but prejudice a jury against the defendant. This incompetent testimony was received over the strenuous objections of defendant's counsel, and is set out in Appellant's original brief in the Circuit Court of Appeals on pages 132 to 150, to which reference is here respectfully made.

None of the pre-war statements of the accused, testified to by individual witnesses, was corroborated by any other witness.

This Honorable Court, in the case of *Cramer* v. *United States*, 65 S. Ct. 918, at page 935, held:

> "The two-witness principle is to interdict imputation of *incriminating acts* to the accused by circumstantial evidence or by the testimony of a single witness."

and on page 934, your Honors said:

> "But the protection of the two-witness rule extends at least to all acts of the defendant which are used to draw incriminating inferences that aid and comfort have been given."

and the use of pre-war statements of the accused to convict him was especially criticized in your Honor's opinion, at page 939, viz.:

> "To use pre-war expressions of opposition to entering a war to convict of treason during the war is a dangerous procedure at best."

2. It was error for the trial Court to receive in evidence, and to submit to the jury testimony relating to "withdrawn" overt acts for consideration by the jury in "*determining the question of the intent with which the defendant may have performed • • • overt acts submitted to your consideration and not withdrawn*". (See Instruction No. 49 of the Court's Charge to the Jury.) Seventeen overt acts alleged in the indictment were "withdrawn" (*sic*). Some of them were testified to by only one witness, others by no witness whatever, and all were considered insufficiently proved according to legal and constitutional requirements. Yet the Court submitted these acts in Instruction No. 49, for the jury's special consideration of the "question of intent" of the accused in performing the submitted overt acts.

This Honorable Court, in reversing the *Cramer* case, said:

> "We cannot sustain a conviction for the acts submitted on the theory that, even if insufficient, some unsubmitted ones may be resorted to as proof of treason. Evidence of the money transaction serves only to show how much went out of the case when it was withdrawn." *Cramer* v. *United States*, 65 S. Ct. 918, 937.

With respect to Overt Acts Nos. 18 and 19, which were withdrawn with the others, in the manner aforementioned, petitioner assigns further error because of improper examination and intimidation of the witness, Gustave Zermer, by the Government's attorney. This objection is set out in Appellant's original brief on pages 169 to 171, inclusive, to which reference is here respectfully made.

3. The trial Court erred in admitting in evidence the testimony of F.B.I. Agents Hirsh and Robe and of Federal convicted prisoners Hamby ad Majerczak, regarding oral statements of the defendant, which constitute admissions or confessions *not made in open Court*, contrary to the prohibition of the Constitution.

The trial Court permitted, over defendant's objections, these witnesses to testify to certain admissions or confessions alleged to have been made by the defendant, while he was in Federal custody, *which alleged confessions or admissions were not made in open Court.* Such statements, claimed to have been made by the accused while in custody, related, in large measure, to the overt acts charged in the indictment to have been committed by the defendant.

The Constitution expressly states that "No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open Court." We regard this provision as a prohibition against obtaining a conviction of the accused by any use of confessions obtained outside of open Court to show guilt of the defendant.

The trial Court erred not only in receiving such testimony but further erred in instructing the jury in Instruction No. 61 that such evidence "of certain alleged admissions made by defendant after he was in custody • • • may be considered by you solely on the issue of the intent or state of mind of the defendant in committing, if he did commit, any of the overt acts alleged in the indictment and submitted to your consideration in these instructions."

4. Testimony of Government witness Ernest Peter Burger and numerous Government Exhibits, consisting of explosive devices, etc., all of which was not connected up with the defendant, and all of which was expressly received in evidence for the sole and exclusive purpose of showing the enemy status of Herbert Haupt, were, nevertheless, considered and relied upon by the jury and by his Honor, Judge Evans, in said Circuit Court of Appeals opinion, to establish treasonable intent on the part of the defendant.

On page 32 of the opinion of Judge Evans, it is said:

> "One of the instructions Herbert received was to obtain a car to facilitate transportations of the explosives from the beach in Florida, for delivery to the various points of sabotage, and as a means of travel for the members of the expedition. The purchase of the car was arranged for within a couple of days of Herbert's return—showing urgency of his duty. The old Plymouth car had not become obsolete, in fact it

was used by the Haupt family during the week of surveillance. There would not have been the rush to buy the new car, without the pressing need for it."

A reading of Burger's testimony, which forms the basis for the above comment ,will disclose that Burger's recital of events and conversations occurring in Germany was objected to as hearsay evidence, and that time and again it was asserted by the Government that such testimony was offered merely for the purpose of proving the enemy status of Herbert Haupt, and that the testimony regarding the instructions given to Herbert Haupt and regarding other events in Germany were specifically restricted to that one point.

We, therefore, believe it was error for the Court to use this testimony for any different purpose, especially when such evidence was not competent for such other purpose. Also the other conclusions seems to be erroneous. There was no need for Herbert Haupt to acquire an automobile immediately upon his return because of "urgency of his duty". The saboteurs were not to begin operations, according to Burger, until at least three or four months after they had landed. And while it was true that the father's car, the old Plymouth, had not become obsolete, it should be remembered that the father used the car daily in his business as a painter, decorator and bricklayer.

It is perhaps the common experience of every father, who has a son or sons at home, that it is very hard for the father to have the use of the family car, as the son or sons seem to have constant and urgent need therefor in their social activities; and it seems that most fathers know that such constant and urgent need begins the very day when the son returns, as so many have done in recent

months. In the present case, it should be remembered that Herbert Haupt had owned a car, which he left behind and which the father had taken over and practically converted into a painter's truck.

Concerning the evidence of the Government's exhibits of explosive devices, etc., which were not admitted, nor admissible, as evidence against the defendant, Hans Haupt, the opinion of the Circuit Court of Appeals actually predicates its conclusion of guilt of the petitioner herein upon such evidence, *sic*, on page 43 of the opinion:

> "As against the defendant this evidence was receivable to show the treason to which Herbert was a party. It was necessary for the Government to show treason and *also* that defendant was a party to said treason. This evidence tended to show treason. The burden was on the Government to show (a) a treasonable enterprise and (b) defendant was a party to it. This evidence was part of the proof tending to establish (a). And the crime of treason is not child's play. It's a most serious matter. In all its naked wickedness, it is shocking. To offer evidence that the actors used high power explosives to destroy war industries, to kill large bodies of workers, to obtain war secrets of great value to the enemy, was no doubt highly impressive and persuasive with a jury of loyal American citizens. The complaint of counsel, however, should not be directed to the inadmissibility of such evidence. It should be directed to the action of defendant and his son. As against each of them such evidence would not have been harmful, had Hans and Herbert not been actors playing a leading role in the perpetration of said treason."

It is respectfully submitted that Herbert Haupt has never been charged with the crime of treason, nor tried therefor; nor had any high powered explosives been used

to destroy war industries, or to kill large bodies of workers (contrary to the assumptions made on page 43 of the Court's opinion). No act of sabotage was ever committed either by Herbert Haupt or by the defendant. It has been the theory of the defense in the case at bar, that Herbert Haupt abandoned his mission after he reached America, and counsel believe such to have been the fact. We are informed that such defense was made on behalf of certain of the saboteurs at the military trial and is now confirmed by information recently released to the press by the Depart of Justice.

The exhibits of explosive devices, admitted over defense objections, were not admissible against the defendant, and were not even connected up with Herbert Haupt. In fact, the exhibits and the entire testimony of Burger and of the FBI agents and experts was specifically restricted, when admitted in evidence, to show only the enemy status of Herbert Haupt and nothing else.

D.

The acts charged in the indictment were legally insufficient to constitute the crime of treason. The defendant's demurrer to the indictment should have been sustained.

Assuming full and sufficient proof (i. e., by two direct witnesses, etc.), for the purpose of this point, as to certain of the overt acts charged, it is clear that *neither the proof nor the allegation constitute, or could constitute, treason as declared by the Supreme Court in the Cramer case.*

We refer specifically to overt acts Nos. 10, 11, 13 and 15. Each of these overt acts merely charge the defendant with the act of "accompanying" Herbert Haupt, with only a variation as to the time and the destination stated.

Essentially, the same charge of *accompanying* (plus *conferring, treating and counselling with*) Werner Thiel, an enemy of the United States, was made in overt act No. 2 of the *Cramer case* as was made in our case in overt acts Nos. 10, 11, 13 and 15.

The *act* of Cramer in *accompanying* Thiel, as charged there in overt act No. 2, was fully proved in that case, viz.:

> "By direct testimony of two or more agents it was established that Cramer met Thiel and Kerling on the occasions and at the places charged and that they drank together and engaged long and earnestly in conversation. This is the sum of the overt acts as established by the testimony of two witnesses." *Cramer* v. *United States,* 65 S. Ct. 918, at page 936.

The Supreme Court reversed the *Cramer* conviction, making the following specific ruling:

> "We hold that overt acts 1 and 2 are insufficient as proved to support the judgment of conviction, which accordingly is reversed." *Cramer* v. *U. S.,* 65 S. Ct. 918, at p. 941.

Thus, as far as the charge of *accompanying* was concerned, such charge was fully proven in the *Cramer case,* but proof of such fact was held to be proof of an act legally insufficient to constitute treason.

A further comment, from the *Cramer case,* is also illuminating upon this point, viz.:

> "But if it showed him (*Cramer*) disposed to betray, and showed that he had opportunity to do so, it still has not proved in the manner required that he did any acts submitted to the jury as a basis for conviction which had the effect of betraying by giv-

ing aid and comfort. To take the intent for the deed would carry us back to constructive treasons." (*Cramer* v. *U. S.*, 65 S. Ct. 918, at page 937.)

Overt act No. 11, charging that the defendant, Hans Max Haupt,

> "*accompanied* the said Herbert Haupt to the home of Heinrich Koch, 7240 N. Odell Avenue, Chicago, Illinois, for the purpose of further assisting said enemy in procuring employment * * *"

and Overt Act No. 15, charging that the defendant

> "accompanied the said enemy Herbert Haupt to the Warner Motor Sales, 958 Diversey Parkway, Chicago, Illinois, to complete the arrangements for the purchase of an automobile for said enemy * * *"

are both in the same class. Moreover, we have definitely established that the Government failed to *prove* by two witnesses Overt Act No. 16, which involved the actual doing, or completion, of the thing for which it is charged in Overt Act No. 15 the defendant accompanied Herbert Haupt. Is Overt Act No. 15 (a most innocent act on the face of it) a legally sufficient overt act? All it charges is the act of accompanying. As noted, in the *Cramer case* it was held that such act is not a legally sufficient overt act of treason.

In fact, Overt Act No. 15, as well as the other overt acts, Nos. 10, 11 and 13; charging merely "accompanying", are not separate overt acts in their essence, but are merely parts of the particular overt acts which involve the ultimate purpose, and should not have been pleaded as separate overt acts. As separate overt acts, they are legally insufficient. If it were permitted to split one overt act into any number of parts, and then plead each one of such parts as separate overt acts, it would only be necessary

to ascribe a treasonable intention to each one of such overt acts, and there could never be a failure of proof of some selected part of the action pleaded as an overt act, namely such part or parts of the alleged charge which contained actions of a commonplace, everyday occurrence, such as the action of "accompanying". However, such ingenious method would not support a conviction, as is clearly indicated in the *Cramer case*:.

> "On the other hand, the Government's contention that it may prove by two witnesses an apparently commonplace and insignificant act and from other circumstances create an inference that the act was a step in treason and was done with treasonable intent really is a contention that the function of the overt act in a treason prosecution is almost zero. It is obvious that the function we ascribe to the overt act is significant chiefly because it measures the two-witness rule protection to the accused and its handicap to the prosecution. If the overt act or acts must go all the way to make out the complete treason, the defendant is protected at all points by the two-witness requirement. If the act may be an insignificant one, then the constitutional safeguards are shrunken so as to be applicable only at a point where they are least needed." *Cramer* v. *U. S.*, 65 S. Ct. 918, 934.

The opinion of the Circuit Court of Appeals herein, written by Judge Evans, concedes that the case must be reversed if any of the overt acts submitted to the jury were "either legally insufficient or not sufficiently established to present a jury question, by the direct testimony of two witnesses." (Opinion pages 7 and 45.) If said overt acts, or any of them, were, in fact, legally insufficient, as we maintain, then the Circuit Court of Appeals erred in failing to reverse the case.

The Government likewise made this same concession in its supplemental "*Memorandum of Authorities*" filed after oral argument, which, in view of the foregoing facts, amounts practically to a confession of error. (See Appeals Court Record, page 4.) Overt Acts Nos. 10, 11, 13 and 15 (merely charging "accompanying") are manifestly insufficient as a matter of pleading. In fact, they are but inconsequential parts of overt acts, pleaded, however, as complete overt acts in themselves.

E.

The trial Court improperly refused to receive in evidence the Statute of the State of Illinois relating to accessories after the fact, offered on behalf of the defendant.

It is generally considered to be against public policy to punish members of the immediate family of an offender as accessories after the fact, notwithstanding their knowledge of the fact that the offender has committed a crime. This public policy is declared or recognized in Illinois Revised Statutes, 1941, State Bar Association Edition, Chapter 38, Division II, Section 4, Paragraph 584. Several of the overt acts, Nos. 12, 17, 20, 21, 22 and 23, charged that the defendant harbored and sheltered Herbert Haupt in his home, and all of the alleged overt acts charge the defendant with intending to aid or assist Herbert. The laws of the several States, except where the Constitution, treaties or statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trial at common law, in the courts of the United States, in cases where they apply. The common law, as modified and changed by the Constitution and statutes of the State where the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent

with the laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, shall govern in the infliction of punishment on the party found guilty. See United States Code, Title 28, Sec. 725; R. S. Sec. 721, and United States Code, Title 28, Sec. 729; R. S. Sec. 722.

We contend that it was error for the trial Court to refuse to receive said Statute in evidence, and that it was error for the Circuit Court of Appeals to affirm this ruling of the trial court. (Opinion, page 48.)

F.

There was not sufficient evidence to submit the case to the jury, and the trial Court should have directed a verdict of "not guilty" as to each of the "submitted overt acts" (i.e., overt acts Nos. 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22 and 23).

We have already pointed out under Points A and C constitutional and technical insufficiency of the proof offered in support of said overt acts, as well as the incompetency of much of the proof offered by the Government upon which a verdict of guilty was secured from the jury. Reference is respectfully made, also, to Appellant's Brief in the Circuit Court of Appeals, pages 177 to 188, inclusive.

All of the overt acts which were submitted to the jury "as possible overt acts of treason" were of innocent nature, colorless and harmless in themselves. To obtain a conviction from the jury, it was necessary for the prosecution to ascribe a treasonable intent to all of said submitted acts, which traitorous intention was not manifest, however, from these colorless, insignificant and innocent

appearing acts themselves. The prosecution, however, accomplished the conviction of the defendant by the introduction of incompetent and highly prejudicial evidence. This matter has already been discussed under Point C *ante*, to which reference is here respectfully made.

G.

Petitioner was deprived of a fair and impartial trial by reason of improper, inflammatory and prejudicial argument to the jury by the Government's attorneys, appealing to passion, prejudice, patriotic emotions and war hysteria.

This matter would require considerable space, and we would like to refer this Honorable Court to Appellant's Brief in the Circuit Court of Appeals, pages 225 to 235, where the prejudicial argument is set out together with our authorities in support of this point.

H.

The trial Court committed reversible error in the giving of its charge and instructions to the jury, and in refusing to give proper instructions requested on behalf of the defendant.

1. Petitioner assigns error in the giving of the following numbered instructions in the Court's Charge to the Jury:

Instructions 9, 13, 26, 36, 39, 40, 41, 47, 49, 50, 51, 53, 54, 55, 56, 57, 58, 60 and 61. (Bill of Exceptions, 1794-1817.)

and in the refusal to give

Defendant's Requested Instructions: D-2, D-6, D-7, D-8, D-15, D-16, D-17, D-19, D-21, D-22, D-23, D-27, D-28, D-29 and D-30. (Bill of Exceptions, 1764-1791.)

A general verdict was returned by the jury in the case at bar finding the defendant "guilty as charged in the indictment." It was conceded, both in the opinion of the Circuit Court of Appeals and in the supplemental brief, entitled "Memorandum of Authorities", filed by the Government after oral argument in the Circuit Court of Appeals, that instructions Nos. 50 and 51 were, or would be, erroneous in connection with a general verdict, and the case would have to be reversed, "if the court submitted to the jury certain alleged overt acts which were charged in the indictment but which were either legally insufficient or not sufficiently established to present a jury question, by the direct testimony of two witnesses." (See Opinion, page 7.) Instructions Nos. 50 and 51, in substance, informed the jury that it was not necessary for the government to prove by two witnesses more than one of the submitted overt acts and that proof of *any one* of the submitted overt acts would warrant a conviction of the defendant. Elsewhere, we have shown that there was a manifest failure of proof on several of the submitted overt acts and that several of the submitted overt acts were manifestly insufficient as a matter of law under the ruling in the *Cramer case*. We believe that further argument would be superfluous to show the propriety of a reversal of the case upon this ground alone, without regard for the other serious errors which were committed in the trial of the case.

For convenience, we have set out in an appendix to this brief, certain of the instructions in the Court's Charge to the Jury, to which we objected and now assign error, together with our comments thereon. Likewise, in the appendix, are set out the defendant's requested instructions, which the Court refused to give, and our comments thereon.

2. The Court erred in sending into the jury room for the consideration of the jury a copy of the indictment, containing as it did a prejudicial and hurtful narrative, made up of many allegations of prejudicial matter irrelevant to the alleged overt acts of the defendant, and made up of many allegations concerning alleged overt acts upon which there was no evidence, or insufficient evidence, and which were withdrawn from the jury.

Said error of the Court in submitting the entire indictment to the jury was aggravated by the instructions contained in Paragraph 49 of the Charge to the Jury, wherein and whereby a belief by the jury of a treasonable intent of the defendant with respect to withdrawn overt acts—not even required to be founded upon evidence—was allowed to supply the treasonable intent for the submitted overt acts.

The defendant's counsel objected to the sending of the indictment to the jury room for their consideration, and called attention to the fact that the indictment contained a large number of overt acts which had been withdrawn, but the Court overruled the objection (Bill of Exceptions, 1273-1274).

Moreover, the indictment, in its preamble, contained a prejudicial and hurtful narrative regarding the alleged mission of Herbert Haupt, much of which was not supported by any evidence, but which had the necessary effect of prejudicing the defendant's right to a fair and impartial trial.

3. The Court erred in sending into the jury room for the consideration of the jury, the Court's Charge to the Jury, in typewritten form, thereby accentuating all the errors contained in the instructions in said Charge to the Jury, and

particularly the errors contained in Paragraphs 53, 54 and 63 of said Charge, which were inconsistent with and nullified the effect of the instruction in Paragraph 37 of said Charge to the jury.

If the instructions of the Court had been entirely free of error, we would have no complaint in regard to the sending of the same into the jury room. But as a result of the jury having said instructions before them during their deliberations, the pernicious effect of the erroneous instructions continued to operate against the defendant.

I.

Petitioner was deprived of a fair trial by reason of the constraint and exhaustion of the jury, resulting from 28 hours of continuous deliberation without sleep, and without accommodation for rest and sleep.

We contend that the compulsion resulting from the confinement of six men and six women jurors for approximately 28 hours in a jury room in the court house, without any accommodations for sleep or rest, operated to prejudice and did prejudice the right of the defendant to a fair and impartial trial. The jury, or some of them, obviously were in doubt as to whether or not the defendant should be found guilty upon the evidence submitted to their consideration. Previous to this continuous deliberation of 28 hours, the jury had sat through the proceedings of the last session of the court, so that the jurors were actually compelled to go without sleep for a period of 33 hours or more.

In the case of *Bollenbach* v. *U. S.*, opinion rendered in the U. S. Supreme Court on January 28, 1946, as case No.

41 of the October term of 1945, the jury were deadlocked for a period of 7 hours. Further instructions were given by the court to the jury which broke the deadlock and resulted in a verdict. This Honorable Court made the following comment on page 4 of its opinion:

> "An experienced trial judge should have realized that such a long wrangle in the jury room as occurred in this case would leave the jury in a state of frayed nerves and fatigued attention, with the desire to go home and escape overnight detention, particularly in view of a plain hint from the judge that a verdict ought to be forthcoming."

In the case at bar, the reading of the testimony of FBI Agents Hirsh and Robe to the jury after they were deadlocked for 24 hours and were unable to reach a verdict had an effect similar to the further instructions given by the court in the *Bollenbach case*. This testimony was incompetent and should not have been received in the first instance.

J.

The petitioner was deprived of a fair trial by the reading to the jury of the testimony of two Government witnesses (Hirsh and Robe) and one defense witness (Benedict Short), which was allowed over petitioner's objections twenty-four (24) hours after the submission of the case and the retirement of the jury to consider their verdict.

A most serious error was committed by the Trial Court after the conclusion of the trial and the submission of the case to the jury.

The case was submitted to the jury shortly before noon on June 8, 1944 (i. e., 11:22 A. M.). The jury deliberated

upon their verdict for approximately twenty-four hours without being permitted any accommodations for sleeping for resting, and without being able to agree upon any verdict. About five hours after the case had been submitted to the jury, counsel for the defendant asked the Court to reconsider certain instructions in the Court's Charge to the Jury, namely, Nos. 53 and 54, and the objections which counsel had made thereto, and requested a modification or elimination of said instructions.

In this connection, the Court remarked:

> "It would just confuse the jury by sending in another instruction and emphasize something all out of proportion. No matter how much we tell them about the instruction, or what has been said, they could never refrain from over-emphasizizng what we would now send to them" (Bill of Exceptions, 1607).

The request of defense counsel was refused.

The following day, while the jury was still deliberating and unable to reach a verdict, the foreman sent a request in writing to his Honor, Judge Barnes, "that the testimony of Messrs. Short, Hirsh and Robe be read to them at this time."

A conference was had in chambers between the Court and counsel for both sides. The defendant's counsel objected to the reading of such testimony to the jury. The United States Attorney was doubtful, and thought it would be dangerous to do so over defense objection. Counsel for defendant particularly pointed out the connection between the testimony of Government witnesses Hirsh and Robe, and the objectionable matter contained in instructions Nos. 53 and 54 which practically cancelled out the correct instruction No. 37. We also called the Court's attention

to our original objections to the competency of the original testimony of these witnesses (Bill of Exceptions, 1613); and to the fact that the jury had then been deliberating, without sleep, uninterruptedly for twenty-four hours, with the exception of time spent for luncheon, dinner and breakfast (Bill of Exceptions, 1617). The Court overruled the objections of the defendant, and directed counsel to read the testimony of their respective witnesses. Counsel for the defendant informed the Court that he would rather not take part in the reading of the testimony, but the Court directed that he should read the testimony of the defense witness, Mr. Short, without any waiver of defense objections (Bill of Exceptions, 1614). The jury were recalled to the courtroom, and, in the presence of the defendant, the testimony of the two Government agents, Hirsh and Robe, and of the defense witness, Mr. Short, was read to the jury, after which the jury retired and arrived at a verdict of guilty, approximately twenty-eight hours after the case had been submitted to them. Including the morning of the day of the submission of the case to the jury, the various members of the jury (six men and six women) must have been without sleep for a matter of approximately thirty-three hours. We believe that the Court should have either discharged the jury after a reasonable time of deliberation, or should have permitted the jury accommodation for sleep at some hotel.

We believe that the defendant was greatly prejudiced by the irregularity of the reading of the testimony of the two Government witnesses, which in combination with the erroneous instructions of the Court, tended greatly to deprive the defendant of that fair and impartial trial in conformity with law that he was entitled to have. The jury were allowed to hear a second time a small portion

of the proceedings of a long trial, embracing the testimony of two witnesses for the prosecution and only one witness for the defense, without having the benefit of hearing again the testimony of all of the other witnesses, on direct examination and upon cross examination, and without hearing the remainder of the evidence on behalf of the defendant. Likewise, there was no repetition of the arguments of counsel for the defendant. The aforementioned remark that the Court made with respect to sending an instruction to the jury after their retirement applied with even greater force to the reading of such testimony to the jury. It emphasized such testimony all out of proportion. No matter what the Court might tell them in instructions with respect thereto, the jury could never refrain from over-emphasizing the testimony of such witnesses. The error committed by the Court in originally admitting the testimony of the Government agents concerning alleged admissions of the defendant not made in open court, became doubly harmful and grievously prejudicial.

K.

The verdict of the jury was the result of passion, prejudice, war hysteria and misapprehension of law and fact induced by the errors committed in the trial of the case.

Numerous prejudicial errors were committed in the trial of the case in receiving improper and prejudicial evidence and in giving to the jury erroneous instructions. The verdict was further induced by improper, highly inflammatory and prejudicial argument made by the Government's attorneys, appealing to the passion, prejudice and patriotic emotions of the jury. The verdict was further induced by the reading to the jury of the testimony of two Gov-

ernment witnesses (Hirsh and Robe) and of one defense witness (Benedict Short), which was done over petitioner's objections, twenty-four hours after the submission of the case and the retirement of the jury to consider their verdict. The constraint of the jury resulting from twenty-eight hours of continuous deliberation without sleep and without accommodation for rest and sleep further operated to produce a verdict against the defendant. The jury were deadlocked for twenty-eight hours and yet they were not permitted by the Trial Judge to have hotel accommodations, or any other opportunity for rest or sleep, the six men and six women jurors being confined in a jury room in the Court House under conditions which necessarily produced a state of exhaustion to the prejudice of the interest of the defendant. These errors, all of which operated to deprive the defendant of a fair and impartial trial and due deliberation by the jury have already been discussed under our previous points in this brief. These various errors were accentuated by the fact that the trial occurred during wartime and the arguments to the jury by the Government's Attorneys commenced on the very day when the news broke of the invasion of France by American and allied military forces, and what has become known as "D-Day", or "Invasion Day". This dramatic event came at the climax of the trial and undoubtedly had its affect upon the emotions of the jurors.

I.

The verdict in this case was a general one of "guilty as charged in the indictment", without special findings as to the acts or acts on which it rests. Since it is not possible to identify the grounds on which the defendant was convicted, the verdict must be set aside if ANY of the

separable acts submitted was legally insufficient or was insufficiently proved by two witnesses as required by the Constitution. (See Cramer case.) There was a failure of proof, not only upon the overt acts "withdrawn from the jury", but also upon overt acts "submitted to the jury as possible acts of treason." There were, also, submitted overt acts, which were legally insufficient.

Not only was there a failure of proof upon the overt acts "withdrawn from the jury", but there was also a failure of proof upon overt acts "submitted to the jury as possible acts of treason." This failure, we believe, was conclusively shown in the dissenting opinion of his Honor, Judge Major, in the Circuit Court of Appeals. We have also endeavored to demonstrate this fact under our Point A. The legal insufficiency of submitted overt acts has been dealt with under our Point D, to which we respectfully refer.

As conceded in the opinion of the Circuit Court of Appeals herein and by the Government in their supplemental memorandum of authorities, the conviction of the defendant should be reversed if the Court submitted to the jury any alleged overt act which was either legally insufficient or not sufficiently established to present a jury question by the direct testimony of two witnesses.

A sentence cannot rest upon a general verdict of guilty, where the indictment charges several alleged overt acts and where any one of the overt acts submitted to the jury was insufficient. (*Cramer* v. *United States*, 65 S. Ct. 918, 935 footnote 45.)

The jury were instructed in instructions Nos. 50 and 51 that proof of any *one* of the submitted overt acts would be sufficient for the jury to find the defendant guilty.

It follows that these two instructions constitute error, under a general verdict, in view of footnote 45 of the *Cramer case*, if any one of the submitted overt acts was legally insufficient. A like result may prevail, if any one of the submitted overt acts was not proved as required. The Government and the Circuit Court of Appeals conceded both of these propositions.

CONCLUSION.

The trial Court imposed a sentence of life imprisonment and a fine of $10,000.00 upon the petitioner. Numerous errors were committed in the trial of this case, many of which we have not even noticed by reason of the limitations of time and space. However, we believe that we have shown many serious errors, for which the judgment and sentence should be reversed. We believe that every consideration of justice and fairness requires a reversal herein.

We respectfully pray that the petition for writ of certiorari may be granted and the judgment herein and the sentence of the petitioner, Hans Max Haupt, may be reversed and set aside by order of this Honorable Court.

Respectfully submitted,

HANS MAX HAUPT,
Petitioner, *pro se.*

PAUL A. F. WARNHOLTZ,
FREDERICK J. BERTRAM,
Of Counsel for Petitioner.

APPENDIX.

(a) In re: Instructions Given to Jury.

The following instructions given in the Court's Charge to the Jury were objected to, to the giving of which error is assigned by the petitioner herein:

INSTRUCTION No. 26.

"26. The indictment charges that the adherence of the defendant, Hans Max Haupt, to the German Reich, its counselors, armies, navies, agents, representatives and subjects, and said giving of aid and comfort by him consisted * * * in his giving false information regarding and concealing the identity of Herbert Haupt, as a representative of the German Reich and the mission of Herbert Haupt in the United States; in his receiving, holding, possessing, safeguarding and concealing the property and funds of said Herbert Haupt, and in misrepresenting and concealing the ownership of said property and funds and in his maintaining, harboring, feeding and supporting said Herbert Haupt throughout said period of time."

Objections were made by defendant's counsel to the recital of the charges of the indictment in the Court's Charge to the Jury, upon the ground that the recital of such charges by the Court, as done in said Charge would create an unfavorable impression in the minds of the jury and would prejudice the rights of the defendant. (Bill of Exceptions, 1221.)

Specific objection was made to paragraph 26 of the Court's Charge, wherein the Court repeated the charges above set out, which charges related to overt acts *with-*

drawn and to matters upon which no evidence was submitted. (Bill of Exceptions, 1224-1227.)

We believe it was substantial error for the Court in its Charge to tell the jury that the defendant was charged with committing offenses related in overt acts which were withdrawn, especially when the Court later told the jury that they might consider such withdrawn overt acts in determining the question of the treasonable intent of the defendant (proof of which withdrawn overt acts was not required). Reference is here made to Instruction No. 49, as it bears upon No. 26 above mentioned.

INSTRUCTION No. 36.

"36. Applying these general principles to this case, if you find from the evidence beyond a reasonable doubt that during the period from June 17, 1942, to and including July 17, 1942, Herbert Haupt was an agent of the government of the German Reich, or an enemy saboteur, and that he was engaged with or working for the government of the German Reich to assist that government in the prosecution of its war against the United States, or to hamper the United States in the prosecution of its war against Germany, and that the defendant knew that Herbert Haupt was an enemy agent or saboteur as aforesaid, and with such knowledge adhered to said Herbert Haupt as an enemy agent and with treasonable intent, as hereinbefore defined, gave him aid and comfort as such enemy as alleged in the indictment, then you may find that such defendant intended to adhere to the enemies of the United States and give aid and comfort to them."

This instruction in effect directs a verdict against the defendant without requiring proof by "the testimony of two witnesses to the same overt act" as required by the Constitution. We contend that it was reversible error

for the Court to omit this essential requirement in its specific statement to the jury of what must be proved in order to find the defendant guilty of treason. The instruction permits the jury to make such finding *without requiring the proof of even a single overt act.* Reference is made to the indictment generally, but this reference does not require proof of any overt acts. The instruction is restricted only to a *belief* of the jury beyond a reasonable doubt that the defendant gave aid and comfort to Herbert Haupt, with knowledge that he was an enemy agent. The intent to adhere to Herbert is declared to be sufficient evidence that the defendant intended to adhere to the enemies of the United States.

This ignores the issue of the real intent of the defendant, and it ignores, particularly, the defense theory predicated upon the father and son relationship, and the fact that a father might do an act to comfort his son, particularly a natural act, such as giving shelter to an offspring, without any intention to commit treason, and without any intention to do harm to the United States.

The omission of the overt act and the two-witness rule from this instruction make it erroneous, and, we believe the error is of such magnitude as to require a reversal of the case.

We may also add, that in this instruction, and also in instructions numbered 33, 34, 35 and 50, reference is made to "treasonable intent, as hereinbefore defined". However, "treasonable intent" was not defined "hereinbefore", nor anywhere in the Court's Charge and instructions to the jury.

INSTRUCTION No. 41.

"41. An overt act in itself may be a perfectly innocent act, standing by itself; but it must be in some manner in furtherance of the crime."

Objection was made to this instruction as being misleading and confusing to the jury. The United States Attorney expressed doubt concerning the particular language used, and suggested changing the words "perfectly innocent act" to read "perfectly innocent appearing act," which suggestion was concurred in by defense counsel, but the Court refused to modify the language to insert the word "appearing". (Bill of Exceptions, 1240-1242.) We believe that our objection is sound. If an act of the defendant is in fact perfectly innocent, nothing can make it either treasonable or criminal. The fact that an innocent act happens to further the accomplishment of a crime, certainly does not make the innocent doer of the act either a criminal or a traitor. The suggested modification might have clarified the language somewhat, but the Court refused to accept the suggestion. If the jury could receive the impression, and we think they definitely could, that the defendant might be guilty of treason, even though the overt act in question was perfectly innocent, then this instruction deprived the defendant of a fair trial and is reversible error. We now contend such to be the fact.

INSTRUCTION No. 49.

"49. Since the law requires that there shall be no conviction of treason unless there are two direct witnesses to the same overt act, all the other alleged overt acts charged in this indictment are hereby withdrawn from your consideration as overt acts of treason, for even if you believe beyond a reasonable doubt they were performed, they may not in themselves be

made the basis of a conviction under the Constitution. However, if you believe beyond a reasonable doubt that the defendant did actually perform any of these other alleged overt acts which were not proven to the degree required by the Constitution, you may consider any such act in determining the question of the intent with which the defendant may have performed, if you find beyond a reasonable doubt he did perform any of the above alleged overt acts submitted to your consideration and not withdrawn, and which other possible overt acts, not withdrawn, you find from all of the evidence are proven beyond a reasonable doubt by two direct witnesses to the same overt act."

We believe this instruction constitutes reversible error in view of the recent decision in the *Cramer case.*

The instruction informs the jury that they may consider overt acts which were "withdrawn from your consideration as overt acts of treason * * * in determining the question of the intent with which the defendant may have performed, if you find beyond a reasonable doubt he did perform any of the above alleged overt acts submitted to your consideration and not withdrawn," etc. In this connection, it will be noted that the jury is permitted to consider the "withdrawn overt acts" upon the question of intent *without any requirement that such withdrawn overt acts need to be established by any degree of proof whatsoever.*

The Supreme Court, in reversing the *Cramer case,* said:

> "We cannot sustain a conviction for the acts submitted on the theory that, even if insufficient, some unsubmitted ones may be resorted to as proof of treason. Evidence of the money transaction serves only to show how much went out of the case when it was withdrawn." *Cramer* v. *United States,* 65 S. Ct. 918, 937.

The testimony of the Government witnesses Hirsh, Robe, Majerczak, Hamby, Miss Demmler, Zermer and Eggert, all concerned, either entirely or in large measure, unsubmitted overt acts which were withdrawn from the jury as possible overt acts because of insufficiency of the proof with respect to such withdrawn acts. There can be no doubt but that this incompetent evidence and this erroneous instruction to the jury, constituted a major factor in producing a conviction of the defendant. Under the authority of the *Cramer case* and the definite ruling of our Supreme Court upon this point, the conviction in this case, we believe, should be reversed.

INSTRUCTION No. 50.

"50. If you believe from the evidence beyond a reasonable doubt that Herbert Haupt, as alleged in the indictment, was an enemy agent, spy or saboteur and that he came into the United States on a mission for the German Reich and was acting as such agent, spy or saboteur on such mission while here, and that the defendant, Hans Max Haupt, knowing that he was such agent, spy or saboteur, unlawfully, feloniously, maliciously, intentionally, traitorously and treasonably and with treasonable intent as hereinbefore defined did adhere to and give aid and comfort to the said Herbert Haupt as an enemy, all as alleged in the indictment, and that in furtherance of or in carrying out said alleged adherence and giving of aid and comfort, Hans Max Haupt with treasonable intent performed any one of the above alleged overt acts submitted to your consideration and that two direct witnesses have testified to such act, then you may find the defendant guilty. Otherwise you must find the defendant not guilty."

This instruction directs the jury to find a verdict of guilty if they believe that the defendant, with treasonable intent, performed *any one* of the submitted overt acts, and that two direct witnesses have testified to such act. This instruction permitting a verdict of guilty if the jury believe any single act of the submitted acts was proved, is absolutely erroneous if this Honorable Court determines that any of the submitted overt acts, as pleaded or as proved, were legally insufficient to support a conviction for treason as a general verdict was rendered.

INSTRUCTION No. 51.

"51. It is not necessary for the government to prove by two witnesses the performance of more than one of the submitted overt acts, providing, of course, the other elements of the alleged crime are proven beyond a reasonable doubt as heretofore defined in these instructions."

The same objection applies to this instruction as to No. 50, with respect to the insufficiency of certain of the submitted acts, as proved and as pleaded. It repeats and emphasizes the error of the trial court in permitting the jury to base a general verdict of guilty upon a submitted overt act which was either insufficiently proved or insufficiently pleaded, or which could not under the constitutional definition be considered an overt act of treason.

INSTRUCTIONS Nos. 53 AND 54.

"53. As I have heretofore stated to you the treasonable intent of the defendant is an essential element of the crime charged herein, and before you can find the defendant guilty you must find beyond a reasonable doubt, not only that such defendant adhered to the enemies of the United States, giving them aid and

comfort, but also that at the time of such alleged adherence and giving of aid and comfort, the defendant intended to do so. This does not mean, however, that you must find that the defendant went through any specific mental process as a result of which he was conscious of the specific thought, 'I am going to commit treason'. This is not necessary for every man in law is presumed to intend the natural and probable consequences of his acts if they are deliberately done. Anyone who is conscious of his acts and his surroundings and knowingly commits certain acts must be regarded as intending the natural and probable consequences of those acts. These observations are, of course, not intended to cast any inferences one way or another on the defendant's intent."

"54. In this regard, motive should not be confused with intent. If a person knowingly and deliberately adheres to and gives aid and comfort to one whom he knows to be an enemy, then he must, in law, be taken to intend the natural and probable consequences of his own deliberate act, and the fact that his motive may not have been to aid the enemy is no defense. In other words, one cannot do an act which he knows will give aid and comfort to a person he knows to be an enemy of the United States and then seek to disclaim criminal and treasonable intent by saying that his motive was not to aid the enemy. So if you believe from the evidence beyond a reasonable doubt that the defendant as alleged in the indictment, performed one or more of the overt acts submitted to your consideration and that that act or those acts were of such a nature that the natural and probable consequence of their performance was to give aid and comfort to the enemy, and if you further believe that the defendant performed such act or acts deliberately with knowledge that Herbert Haupt was an enemy agent, if you find that he was, then you may find that the defendant had the criminal and treasonable intent, since he intended to do the act forbidden by the

law. Under such circumstances, the fact that you may also believe that his motive in so doing, if you find that he did, was for example, to help his son, would not in such event, change the fact that he had a criminal and treasonable intent."

These instructions were strenuously objected to by counsel for the defendant in the conferences with the trial judge. These instructions were suggested by the Government's attorneys and were adopted by the Court practically verbatim.

We objected to the phrase in instruction No. 53, "before you can find the defendant guilty" on the ground that the same indicates an anticipation on the part of the Court that the jury would find the defendant guilty. We also objected to the statement in this instruction which reads: "This does not mean, however, that you must find that the defendant went through any specific mental process as a result of which he was conscious of the specific thought 'I am going to commit treason'. This is not necessary, for every man in law is presumed to intend the natural and probable consequences of his act if they are deliberately done."

We contend that this statement of law is incorrect and erroneous when it is applied to the crime of treason, because in a trial for treason, the specific intent to commit treason is an essential element to be found by the jury. This instruction we believe is particularly vicious in that it misleads the jury and informs them that the intent of the defendant will be presumed as a matter of law if the particular act was consciously and voluntarily done. We maintain that there is a distinction between an intention to do a particular act, and an intention to commit treason. A man may do an act intentionally, and yet not intend

to commit treason. If he does not intend to commit treason, it does not make him guilty of treason because such act actually gave aid and comfort to the enemy. An example of this would be the acts of countless of our citizens during the present war going upon a strike, or doing some other act which obviously interfered with our war effort, and thereby gave aid to the enemy. We do not believe that it can be maintained that such citizens who deliberately went upon a strike, or did some other act, the natural and probable consequence of which aided the enemy, could be tried and convicted of treason under the Constitution of the United States. The reason such persons could not be convicted of treason would be because they did not have the specific intent to commit treason against our country when they did the act in question, and yet every such person, under the express language of this instruction, could be convicted of the crime of treason. We insist that to tell the jury that it was not necessary that the defendant should have been conscious of the specific thought, "I am going to commit treason", was reversible error. That thought is the very thing that the Constitution and laws of the United States require must be present in order to convict a citizen of treason.

The Supreme Court makes this clear in the *Cramer case*, 65 S. Ct. 918, at page 933:

> "Of course the overt acts of aid and comfort must be intentional as distinguished from merely negligent or undesigned ones. Intent in that limited sense is not in issue here. But to make treason the defendant **not only must intend the act, but he must intend to betry his country by means of the act.**" (Emphasis supplied.)

This instruction made it possible for the prosecution to avoid the very safeguard which our Constitution intended to establish for the protection of our citizens in a trial for this high crime.

We contend that Instructions 53 and 54 together build up in logical sequence a situation where the jury would be left with nothing to decide if they found that the defendant had performed any single one of the commonplace and insignificant acts which are charged in the indictment as overt acts of treason, namely, sheltering Herbert, or accompanying him to a home or to a place of business, or merely signing a financial statement or a purchase order for an automobile.

Instruction No. 54, in our opinion, commits grievous error. It is wholly erroneous in conception and grievously prejudicial to the right of the defendant to a fair and impartial trial by a jury properly instructed upon the law.

In this instruction, a distinction is attempted to be drawn between *motive* and *intent*, where none exists in law or in fact. The fact that the defendant's motive may not have been to aid the enemy is declared to be *no defense*.

This is fallacious quibbling. There is no basis under the Constitution for rejecting the motive with which an act is done. It is not true that the fact that the defendant's motive was not to aid the enemy could be no defense. There must be adherence and adherence must be the motive or motivating force.

"Motive" is defined as:

> "That which incites to action, prompts or excites to choice, or moves the will." (Webster's Collegiate Dictionary.)

To tell the jury that the defendant's motive was not of any consequence and that he could be guilty of treason, though his motive was not to aid the enemy, was utterly to confuse the jury, and to nullify the protection of the Constitutional provision.

In the *Cramer case,* 65 S. Ct. 918, at page 932, the Court said:

> "On the other hand, a citizen may take actions which do aid and comfort the enemy—making a speech critical of the government or opposing its measures, profiteering, striking in defense plants or essential work, and the hundred other things which impair our cohesion and diminish our strength—but if there is no adherence to the enemy in this, if there is no intent to betray, there is no treason."

The instruction further departs from the Constitutional definition in emphasizing the adherence and aid to *one person,* which distorts or detracts from the requirement of an intention to aid the *enemies* of the United States.

The instruction unqualifiedly states, "if the person knowingly and deliberately adheres to and gives aid and comfort to one whom he knows to be an enemy, then he must, in law, be taken to intend the natural and probable consequences of his own deliberate act, and the fact that his motive may not have been to aid the enemy is no defense."

This statement violates the Constitution and every authoritative statement of the law of treason that we have read. The very nature of treason, and the constitutional requirement that there must be an adherence to the *enemies* of the United States, is ignored in this instruction. If the motive of the accused is not to aid the enemy, (in this case, the German Reich), there can be no treason.

Further on in this instruction, the jury are informed that if they believe that the natural and probable consequence of a "submitted overt act" was to give aid and comfort to the enemy, and that the defendant performed such act "with knowledge that Herbert Haupt was an enemy agent, if you find that he was, then you may find the defendant had the criminal and treasonable intent since he intended to do the act forbidden by law."

This statement entirely eliminates the requirement of adherence to the enemy. An accused person may commit treason and not know it, under this instruction. If the sole test is whether or not the natural and probable consequence of an act was to give aid and comfort to the enemy, then indeed, the words of Justice Livingston in *United States* v. *Hoxie*, 26 Fed. cases 15,407, at page 399, would aptly describe the situation that would result:

> "Once disregard these exceptions, and render the constitutional rule as flexible or comprehensive as it is now suggested to be, and prosecutions for treason will become as common as indictments for petit larcenies, assaults and batteries, or other misdemeanors. If every opposition to law be treason, for very like this is the language we have heard, as all offences partake in some measure of that quality, who can say how many of them will in time become ranged under the class of treason. Neither you, nor the court, can feel any ambition of leading the way, in setting a precedent so dangerous, or one that will in any degree tend to demolish that barrier which has been raised by the Constitution against constructive treasons."

Under this instruction, every person who participated in a strike during war time, could be prosecuted and convicted of treason. Though such actions may be reprehensible, they do not amount to treason under American law.

The question of intent in a treason case is not the same as the question of intent in most criminal cases, as for example, burglary or robbery with a gun. This is pointed out in the *Cramer case*, 65 S. Ct. 918, at page 933, as follows:

> "Questions of intent in a treason case are even more complicated than in most criminal cases because of the peculiarity of the two different elements which together make the offense. Of course the overt acts of aid and comfort must be intentional as distinguished from merely negligent or undesigned ones. Intent in that limited sense is not in issue here. But to make treason, the defendant not only must intend the act, but he must intend to betray his country by means of the act. It is here that Cramer defends."

It will be noted, also, that the instruction directly conflicts with and nullifies instruction No. 37 in the Court's Charge, given with respect to the defense theory upon the father and son relati nship, and which reads as follows:

INSTRUCTION No. 37.

> "37. If you are not satisfied, beyond a reasonable doubt, that the defendant's intention and purpose in acting as he did was evil, that is, if you are not satisfied beyond a reasonable doubt that the defendant intended to aid and comfort the enemies of the United States, the defendant must be found not guilty. If you believe the defendant's intention in doing what he did during the period from June 17, 1942, to and including July 17, 1942, was not in any way to injure the United States but merely to assist his son, Herbert Haupt, as an individual, as distinguished from assisting him in his purposes, if such existed, of aiding the German Reich, or of injuring the United States, the defendant must be found not guilty."

Now, instruction No. 37 is certainly based upon the premises that Hans Haupt knew his son to be an enemy agent. If that were not so, what reason could there be for giving this instruction at all? If that were not so, Hans Haupt would be in the same position as any streetcar conductor, who accepts a fare from an enemy agent and permits him to ride on his streetcar, however, not knowing him to be an enemy agent. And who would deem it less than absurd, to claim that such motorman had been guilty of treason by reason of such act?

Certainly, instruction No. 37 presupposes knowledge by Hans Haupt of Herbert's enemy status. And it correctly points out the difference, as it affects the law of treason, between an act by a father to assist his son as an individual, as distinguished from assisting him in his purposes, if such existed, of aiding the German Reich, or of injuring the United States.

And now, by instruction No. 53 the jury are told that a specific intent to commit treason is unnecessary for the commission of the crime of treason, and by instruction No. 54 the jury are told, that the intent, as it was properly called in instruction No. 37, does not exist anymore, except as a legal conclusion. The "intention" with which the father may have acted under instruction No. 37, has disappeared, and the word "motive" has taken its place. And the act of a father assisting, as an innocent act, has also disappeared, and whatever act a father may have committed, in the nature of assisting his son, by virtue of instructions Nos. 53 and 54 must necessarily become one of aiding the enemies of the United States, namely the German Reich.

At the end of instruction No. 54, the jury are told that even though the jury may believe that the defendant's *motive* was to help an individual, namely, his son, it would not in such event "change the fact that the defendant had a criminal and treasonable intent."

The fact that the instructions (Numbers 37, 53 and 54) are contradictory, or conflicting, is itself ground for reversal because of the confusion of the jury necessarily caused by such conflict.

INSTRUCTIONS NOS. 55 AND 56.

"55. While it is necessary that the government prove treasonable intent beyond a reasonable doubt, it is not necessary to warrant a conviction under the Constitution, that this intent be so established by the testimony of two witnesses; neither is it necessary that this intent be so proven by direct evidence, as such intent may be so proven either by direct or circumstantial evidence. Intent, being a mental state may not be susceptible of being proved by direct evidence, and, therefore, you may infer the nature of the defendant's intent from all the circumstances."

"56. Circumstantial evidence is evidence which tends to prove a disputed fact by proof of other facts and circumstances, which have a legitimate tendency to lead the mind to the conclusion that the fact exists, which is sought to be established."

These instructions state a rule of law contrary to the rules laid down in the *Cramer case*, 65 S. Ct. 918, at pages 934, 935 and 937 and constitute error.

INSTRUCTIONS NOS. 57 AND 58.

"57.. The defendant's own conduct and words, if any, may be an index as to his intent and you may infer from the defendant's conduct, and words, if any are shown by the evidence, what his intent might have been."

"58. There has been some testimony of certain statements purportedly made by the defendant prior to our declaration of war with Germany. Such statements of the defendant, if you believe they were made, are not grounds for charging the defendant with treason. The defendant, as well as others, had the right to his opinions and to do anything lawful in keeping with those opinions and sympathies, but those statements, if you believe any were made, may be borne in mind by you in determining what his intent may have been after this country was at war with Germany, in committing, if you find beyond a reasonable doubt that he did so commit, any of the various overt acts charged in the indictment and submitted to your consideration by the court in these instructions."

These instructions plainly tell the jury that the words and conduct of the defendant prior to the war may be considered by the jury in determining what the defendant's intent was, after this country was at war with Germany, in committing (if he did) any of the overt acts charged in the indictment and submitted to the jury.

Upon the authority of the *Cramer Case,* 65 S. Ct. 918, these instructions contained an erroneous statement of law.

In the *Cramer case,* 65 S. Ct. 918, at Page 939, the Court said that with respect to evidence of this character:

"Other evidence relates statements by Cramer before the United States was at war with Germany. At the time they were uttered, however, they were not trea-

sonable. To use pre-war expressions of opposition to entering a war to convict of treason during the war is a dangerous procedure at best. The same may be said about the inference of disloyal attitude created by showing that he refused to buy bonds and closed the door in the salesman's face."

Each statement referred to in Instruction No. 58 was testified to by only one witness. Therefore, the instruction also violates the two-witness rule.

INSTRUCTION No. 60.

"60. The Court has permitted the Government to introduce into evidence in this case certain alleged statements or utterances purportedly made by the defendant prior to the events forming the basis of the indictment in this case. Such statements or utterances, if you believe they were made by the defendants, do not constitute evidence of the commission either of the treason alleged or of the commission of any alleged overt act, but may be considered by you, if you credit them, solely in determining the intent or state of mind of the defendant in performing, if you find he did perform, any alleged overt act or acts of treason charged in the indictment to have been committed by him, and submitted to your consideration in these instructions."

This instruction relates to statements (each testified to by only one witness) made by the defendant prior to the time of the overt acts charged in the indictment, and embraces the pre-war expressions of the defendant. The contentions which we made with respect to Instruction No. 58 likewise apply to this instruction. We contend that under the decision in the *Cramer case*, the testimony of witnesses concerning utterances made by the defendant,

which were entirely unrelated to the overt acts, is incompetent and inadmissible, and that any instruction permitting the jury to consider such testimony would constitute reversible error. The instruction also violates the two-witness rule.

INSTRUCTION No. 61.

"61. The court has also permitted the Government to introduce evidence of certain alleged admissions made by defendant after he was in custody. You are instructed that such evidence may be considered by you solely on the issue of the intent or state of mind of the defendant in committing, if he did commit, any of the overt acts alleged in the indictment and submitted to your consideration in these instructions. In other words, any witness who may have testified to such alleged admissions is not a 'witness' within the meaning of the Constitutional requirement of 'two witnesses to the same overt act.'"

The evidence of alleged admissions referred to in this instruction relates to the testimony of Government Agents Hirsh and Robe and of the convicts, Majerczak and Hamby.

The instruction permits the jury to consider such alleged admissions of the defendant as evidence upon the issue of the treasonable intent of the defendant. It is clear that the testimony of said witnesses relates to confessions of the defendant not made in open Court, but claimed to have been made by him in conversation with the witnesses while he was in custody.

We maintain that the Constitution prohibits the use of a confession in any manner to obtain a conviction for treason, unless such confessions is made in open Court. If the prohibition of the Constitution meant anything less than that, it would be practically valueless as a protection of

the rights of the accused. To let the bars down to permit treasonable intent to be so proved, would place the accused at the mercy of any person (even of convicted criminals, as here). For the same reason, an instruction permitting the jury to consider for any purpose testimony regarding alleged confessions, which were not made in open Court, would be highly improper and erroneous, following the ruling in the *Cramer case*.

If our contention is correct that the Constitution prohibits the use of confessions to obtain a conviction, unless made in open Court, then the giving of instruction No. 61 was reversible error. The words "No person shall be convicted of treason unless—" impliedly prohibit the use of confessions to obtain a conviction unless they are made in open Court.

(b) The Court erred in refusing to give to the jury certain instructions requested on behalf of the defendant.

The defense counsel submitted to the Court thirty instructions in writing, numbered D-1 to D-30, inclusive, and requested that the same be given to the jury by the Court. The Court, however, failed and refused to give to the jury certain of the instructions requested by the defendant, and considered that others of said requested instructions were sufficiently covered in the Court's Charge to the Jury. We shall refer only to those instructions requested on behalf of the defendant which we believe were erroneously refused and were not correctly or sufficiently covered in the Court's Charge to the jury.

REFUSED INSTRUCTION D-2.

An overt act must not only be proved beyond a reasonable doubt by two witnesses who saw the commission of that overt act, but it must also be proved, that

such overt act was committed with an intent to commit treason.

Such overt act must be one of the overt acts enumerated as such in the indictment.

This instruction contained a clear, correct and concise statement of law, and should have been given to the jury. The Court did not in its Charge to the Jury correctly instruct the jury with respect to the required proof of the overt act and treasonable intent, and we; therefore, submit it was error to refuse this instruction.

REFUSED INSTRUCTION D-6.

The Court instructs the Jury that at the times mentioned in the indictment in this case, to wit, during the period from June 17, 1942, to July 17, 1942, there was, and still is, in full force and effect a certain Statute of the State of Illinois, which reads as follows:

"Every person not standing in the relation of husband or wife, parent or child, brother or sister to the offender, who knows the fact that a crime has been committed, and conceals it from the magistrate, or who harbors, conceals, maintains or assists any principal felon, or any accessory before the fact, knowing him to be such, shall be deemed an accessory after the fact, and shall be punished by imprisonment in the penitentiary for a term of not less than one year and not exceeding two years, and fined not exceeding $500.00."

REFUSED INSTRUCTION D-23.

The Court instructs the Jury that under the laws of the State of Illinois a parent cannot be prosecuted as an accessory after the fact for harboring, concealing, maintaining or assisting a son who has committed a crime, even though the parent has knowledge of the commission of the crime after the fact.

These instructions inform the jury of the Illinois Statute, which was in force and effect at the time of the alleged commission of the overt acts charged in the indictment.

The Illinois Statute was pertinent and material to a consideration of the charges of harboring and sheltering Herbert Haupt, who was the defendant's son. This Statute established a rule of public policy in the State of Illinois against the prosecution of parents, or members of the immediate family, as *accessories after the fact,* for harboring, etc., an offender. There is no similar Federal Statute, but there are Federal Statutes (Sections 725 and 729 of Title 28, U.S.C.) which provide that State Statutes, so far as they may be applicable and not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the Federal Courts in the trial and disposition of cases and in the infliction of punishment, etc.

We see no inconsistency between such a law, or public policy, and the Federal Constitution and law on treason. The apparent inconsistency springs from the fact that a natural, normal, commonplace act of giving shelter to the defendant's own son has been selected by the prosecution as an overt act of treason. If something beyond giving shelter or harboring his son was committed by the defendant, then this Statute, which relates only to *accessories after the fact,* likewise would not apply, for if a parent assisted his son in the commission of a crime, he would be subject to prosecution under the State law just as much as he would be under a Federal law.

REFUSED INSTRUCTION D-7.

The Court instructs the Jury that the witnesses, John Majerczak, alias Stanley Norris, and Carl Hamby,

are persons who have each been convicted of several felonious crimes.

The Court further instructs the Jury that the testimony of a witness who has been convicted of a felony is to be considered by the Jury with extreme caution and with due regard for the fact that such witness has been so convicted, insofar as such fact may affect his credibility as a witness.

This instruction was correct in its statement of law, and the defendant was entitled to have the jury instructed that the testimony of the convicts Majerczak and Hamby, who had been several times convicted of felonies, was to be received with extreme caution. The Court did give its own instruction, Number 13, but this instruction instead of serving as a cautionary instruction, had the effect of building up the credibility of such witnesses, and was erroneous in that regard. The Court did not mention the names of said witnesses Majerczak and Hamby, and we believe that the defendant was entitled to have the jury especially cautioned with respect to the credibility of their testimony. The defendant was entitled to have an instruction substantially in the form of the above instruction, and we contend the Court erred in refusing the same.

REFUSED INSTRUCTION D-8.

The Court instructs the Jury that the witness Burger is a person who has been convicted of a felonious crime.

The Court further instructs the Jury that the testimony of a witness who has been convicted of a felony is to be considered by the Jury with caution and with due regard for the fact that such witness has been so convicted, insofar as such fact may affect his credibility as a witness.

The above instruction, relating to the witness Burger, was in proper form, and should have been given to the jury by the Court. The defendant was entitled to have the jury informed that the witness Burger had been convicted of a felony, and that his testimony should be considered with caution, etc. We contend it was error for the Court to refuse to give this instruction, no other instruction having been given upon the matter in proper form.

REFUSED INSTRUCTION D-15.

> The jury are instructed further that the presumption of innocence is not a mere form, to be disregarded by the jury at pleasure, but it is an essential and substantial part of the law of the land, and binding upon the jury in this case; and it is the duty of the jury to give the defendant in this case the full benefit of that presumption.

The above is a stock instruction, and in proper form. While the Court gave an instruction, Number 6, regarding the presumption of innocence, it did not emphasize the duty of the jury in this respect as is done in the above instruction. In a trial for treason, we believe the defendant should be given the benefit of such an instruction, and that it was improper for the Court to refuse the request.

REFUSED INSTRUCTION D-16.

> The burden of proof never shifts from the prosecution to the defendant, but it is upon the prosecution throughout the case to establish every constituent element of the crime of treason beyond a reasonable doubt and by such proof as is required by the Constitution of the United States.

This instruction is also a stock instruction, and the defendant was entitled to have it given upon his request. No other instruction covered this point.

REFUSED INSTRUCTION D-17.

The Court charges the jury that before they can convict the defendant, the evidence must be so strong as to convince each juror of his guilt beyond a reasonable doubt; and if, after considering all of the evidence, a single juror has a reasonable doubt of defendant's guilt, arising out of any part of the evidence, then they cannot convict such defendant.

The above instruction is likewise a stock instruction, which the defendant in a criminal case is entitled to have given to the jury. No other instruction covered this point.

REFUSED INSTRUCTION D-19.

The Court instructs the jury that in treason there must be not only an act of adherence to the enemies of the United States, giving them aid and comfort, but there must be an intention on the part of the accused person to consciously adhere to the enemies of the United States and to give the enemies of the United States aid and comfort by the act in question. There must be proof beyond a reasonable doubt not only of the overt act charged, but of the treasonable intent of the accused person in the commission of that act.

We respectfully submit that the Court committed grave error in refusing to give this instruction to the jury on behalf of the defendants. This instruction was a proper statement of law upon the important matter of the proof necessary to convict the defendant of treason, and advised the jury that in treason there must be "an act of adherence to the enemies of the United States, giving them and and comfort," and that there must be an intention on the part of the accused person to consciously adhere to the enemies of the United States and give them aid and comfort by the act in question, and calls the jury's attention to the

principle of law that there must be not only proof of the overt act charged, but also proof of the treasonable intent of the accused person in the commission of that act. The Court in its charge gave no instruction that adequately or properly covered the statement of law contained in this refused instruction, and we believe that it was reversible error for the Court to refuse to give our instruction. Upon the other hand, as we have shown, the Court's charge to the jury upon these matters was substantially inadequate and to a large extent incorrect as a statement of law. The Court did not give a proper and complete statement of the law as covered in this instruction.

REFUSED INSTRUCTION D-21.

> The Court instructs the jury that if you believe from the evidence in the case that the defendant gave food, shelter, or other personal assistance to Herbert Haupt during the period from June 17th, 1942, to July 17th, 1942, but that such food, shelter and assistance was given to the said Herbert Haupt personally, as to a son, or friend, without any intention on the part of the defendant to aid the enemies of the United States in levying war against the United States, then the giving of such food, shelter and personal assistance to the said Herbert Haupt would not amount in law to the crime of treason.

The defendant was entitled to have the above instruction given to the jury. No instruction given by the Court properly or sufficiently covered the matters contained therein. The defendant was entitled to have an instruction to the jury applying the law with respect to the particular charges in the indictment, where such charges formed a substantial portion of the overt acts which were submitted to the jury. Instead of giving this instruction, the Court

gave other instructions, Numbers 53, 54 and 63, which definitely excluded the defense theory covered by this instruction. We contend the defendant was seriously prejudiced by the refusal of Court to give this instruction.

The above instruction, together with requested instructions D-3, D-4 and D-12, dealt with a principal defense theory, namely, that whatever was done by the defendant with respect to his son, Herbert Haupt, was done only to aid or comfort him as an individual, without any intention to give aid and comfort to the enemies of the United States. We contend that it was error for the Court to refuse to give said instruction D-21.

REFUSED INSTRUCTION D-22.

> Statements made by the defendant before this country's entry into the war, insofar as they may have indicated sympathy or preference for Germany or any criticism of the policy of the United States with respect to the war, were, as a matter of law, entirely lawful and proper, and the jury should not consider such statements as any evidence of treasonable intent.

We believe it was error for the Court to refuse to give this instruction. Not only did the Court fail to give an instruction that the jury should not regard such pre-war statements as any evidence of treasonable intent, but the Court did the opposite, and instructed the jury in instruction Nos. 58 and 60 that they might consider such statements of the defendant in determining the question of his treasonable intent.

(c) Overt Acts Submitted to Jury.

The overt acts, submitted to the jury in this case, charge as treason three groups of acts, namely:

1. Accompanying Herbert Haupt for the purpose of assisting him in securing employment (Overt acts 10 and 11);
2. Harboring and sheltering Herbert Haupt (Overt acts 12, 17, 20, 21, 22 and 23);
3. Accompanying Herbert Haupt to an automobile sales agency, arranging and completing arrangements and paying for the purchase of an automobile for Herbert Haupt (Overt acts 13, 14, 15 and 16).

To each one of these acts a treasonable intent has been ascribed in the indictment.

The overt acts (which were submitted to the jury) as specified in the indictment, grouped in the order above mentioned, are as follows:

GROUP ONE.

"10. Said Hans Max Haupt, on or about June 22, 1942, accompanied said enemy, Herbert Haupt, to the home of Andreas Conrad Grunau, 6361 Leoti Avenue, Chicago, Illinois for the purpose of assisting the said Herbert Haupt in securing employment so that the said enemy might conceal his identity and mission as an agent of the German Reich and be permitted and enabled to carry out and pursue his said mission."

"11. Said Hans Max Haupt, on or about June 22, 1942, accompanied the said Herbert Haupt to the home of Heinrich Koch, 7240 N. Odell Avenue, Chicago, Illinois, for the purpose of further assisting said enemy in procuring employment, so that he might conceal his identity and mission as an agent of the Government of the German Reich and be permitted and enabled to carry out and pursue his said mission."

GROUP TWO.

"12. Said Hans Max Haupt, on or about June 22, 1942, harbored and sheltered the said enemy, Herbert Haupt, at the home of Hans Max Haupt and Erna Haupt, 2324 N. Fremont Street, Chicago, Illinois, well knowing that the said enemy was an agent of the Government of the German Reich in the United States to commit sabotage, act as a spy and perform other services for said Government as aforesaid, all with the intent and for the purpose of assisting said enemy, Herbert Haupt, in carrying out his mission as an agent of the Government of the German Reich as aforesaid."

17, 20, 21, 22 and 23: The language of each of these overt acts is substantially the same as in overt act No. 12, with variations as to dates of the acts.

GROUP THREE.

"13. Said Hans Max Haupt, on or about June 23, 1942, accompanied the said enemy Herbert Haupt to the Warner Motor Sales, 958 Diversey Parkway, Chicago, Illinois, to arrange for the purchase of an automobile for the said enemy Herbert Haupt, with the purpose and intent of assisting the said enemy in carrying out his mission as agent of the Government of the German Reich as aforesaid."

"14. Said Hans Max Haupt on or about the 23rd day of June, 1942, while at the Warner Motor Sales, 958 Diversey Parkway, Chicago, Illinois, signed a financial statement and an order for the purchase of an automobile and made an initial payment of money toward the purchase of said automobile, with the intent and for the purpose of procuring an automobile for the said enemy, Herbert Haupt, and with the intent and for the purpose of assisting the said enemy, Herbert Haupt, to carry out his mission as an agent

of the Government of the German Reich, as aforesaid, and to conceal the identity of Herbert Haupt as such agent."

"15. Said Hans Max Haupt on or about June 24, 1942, again accompanied the said enemy Herbert Haupt to the Warner Motor Sales, 958 Diversey Parkway, Chicago, Illinois, to complete the arrangements for the purchase of an automobile for the said enemy with the intent and purpose of assisting said enemy in carrying out his mission as an agent of the Government of the German Reich, as aforesaid."

16. Said Hans Max Haupt on or about the 24th day of June, 1942, while at the Warner Motor Sales, 958 Diversey Parkway, Chicago, Illinois, made a further payment in cash toward the purchase of an automobile for said enemy, Herbert Haupt, and completed arrangements for the purchase of said automobile and did purchase said automobile for said enemy, Herbert Haupt, with the intent and for the purpose of assisting said enemy, Herbert Haupt, in carrying out his mission as an agent of the Government of the German Reich, as aforesaid."

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1946.

No. 49

HANS MAX HAUPT,
Petitioner,

vs.

THE UNITED STATES OF AMERICA,
Respondent.

PETITIONER'S MEMORANDUM IN REPLY TO BRIEF FOR THE UNITED STATES.

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PETITIONER'S MEMORANDUM IN REPLY TO BRIEF FOR THE UNITED STATES.

To the Honorable, The Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Hans Max Haupt, respectfully shows unto the Court, that there are many inaccuracies contained in the Brief for the United States, as follows:

Inaccuracies in Government's Brief.

1. On Pages 2 and 3 of the Government's Brief is found a list of "Questions Presented." The list does not follow the outline of petitioner's list of "Questions Presented" on pages 4 to 6 of his petition for a Writ of Certiorari. The Government's list omits various questions of the petitioner, among them the following:

> "2. May evidence, which according to all decisions constitutes *circumstantial evidence*, be considered *direct evidence* for the purpose of satisfying the constitutional two-witness requirement, when a charge of treason is involved?
>
> 3. Did the Circuit Court of Appeals perform the functions of the jury in weighing the evidence as to each submitted overt act, for the purpose of overcoming the effect of Instructions Nos. 50 and 51, which required proof of *one* overt act only, and which were apparently erroneous in view of the general verdict rendered?
>
> 10. Was the petitioner deprived of a fair trial by reason of the constraint and exhaustion of the jury, resulting from twenty-eight hours of continuous deliberation without sleep and without accommodation for rest and sleep?
>
> 12. Can a general verdict of "guilty as charged in the indictment" sustain a conviction in the case at bar, in view of instructions Nos. 50 and 51, which are to the effect that a verdict of guilty may be rendered on basis of the commission of any one of the twelve submitted overt acts?
>
> 13. Did the Circuit Court of Appeals fail to apply the principles of law laid down by this Honorable Court in the case of *Cramer* v. *The United States*, 65 S. Ct. 918, requiring a reversal of the case at bar?"

2. On Page 17 of its brief, the Government states, as follows:

> "In the meantime, between 7:30 p.m. and 8:00 p.m., Gustave Zermer, a friend of petitioner's (R. 327-329), arrived at the Haupt apartment (R. 329). Shortly after he entered, Herbert and petitioner also entered together (R. 330). Mrs. Haupt had supper waiting for petitioner and Herbert, so Zermer remained in the parlor while the three Haupts ate in the kitchen (R. 331-332). Meanwhile Mrs. Saure (at that time Miss Melind, a friend of Herbert's) had also come to the Haupt apartment (R. 331). When the meal was completed Zermer joined the elder Haupts in the kitchen and Herbert joined Mrs. Saure in the parlor (R. 332). *Both Zermer and Mrs. Saure testified to these facts.*" (Italics supplied.)

The Government's statement that both Zermer and Mrs. Saure testified "to these facts," evidently is intended to convey the impression that Mrs. Saure also testified that the "three Haupts ate in the kitchen." However, Mrs. Saure testified that Herbert did not eat any food in the home of his parents.

A fair statment of facts will be found on Page 31 of Appellant's brief in the Circuit Court of Appeals, showing that on cross-examination, even Zermer had no personal knowledge of any of the Haupts eating in the kitchen.

The Government's statement that "both Zermer and Mrs. Saure testified to these facts," is misleading, as well as entirely wrong with reference to a material fact, namely, whether or not Herbert Haupt had food in the home of his parents.

3. At the end of Page 17 of the Government's brief, carrying over to Page 18, the Government maintains that Mrs. Kluczyk testified that "Herbert and Mrs. Haupt came

down the stairs from the Haupt apartment.". These words "from the Haupt apartment" are an addition made by the Government, which is not based on any testimony given by Mrs. Kluczyk.

4. On Page 18 of the Government's brief, it is stated that Agent Robe testified that Herbert drove away from the automobile agency with "a newly acquired" Pontiac automobile (R. 449). There was no testimony regarding "a newly acquired" Pontiac automobile.

The words "newly acquired" have been added by the Government attorneys in the brief.

5. On the same page, No. 18, again it is stated that FBI agents testified that Herbert Haupt drove away in his "newly acquired" Pontiac automobile (R. 446, 451, 466).

The testimony does not refer to a "newly acquired" Pontiac automobile, but merely to a "Pontiac automobile." These words "newly acquired" have evidently been added for the purpose of conveying the impression that the respective Pontiac automobile was identical with the Pontiac automobile purchased by his father at the Warner Motor Sales Company. However, nowhere does the record disclose that the Pontiac automobile used by Herbert Haupt has ever been identified with the Pontiac bought by his father.

On Page 21 of the Government's brief, we find the following statement:

> "The car was delivered to Herbert and he drove it away from the sales agency" (R. 449).

As a matter of fact, there is no testimony by any per-

son relating to delivery of a car to Herbert, and of Herbert's driving it away from the sales agency.

Immediately following, we find the statement that "Farrel's testimony *to this effect* was corroborated by that of Vinson, who testified that he saw petitioner and Herbert come in and that he received the money petitioner paid and the note which petitioner signed" (R. 315-316).

This statement is misleading as it creates the impression that Vinson corroborated all of the testimony of Farrell. This is not true. Vinson merely testified that he saw Hans and Herbert Haupt come into the sales agency on that particular evening, and that he did not speak to them at all on that day. Neither did Vinson speak about delivery of the car to Herbert as such testimony was never given by any person.

7. On Page 23 of the Government's brief, footnote No. 9, it is correctly stated from the *Department's records*, that Wergin and Froehling subsequently (*i. e.*, after reversal by the Circuit Court of Appeals of the verdict of guilty rendered November 14 1942, after a joint trial of all six defendants charged with treason, namely, Hans Haupt and his wife Erna, Otto Wergin and his wife Kate, and Walter Froehling and his wife Lucille) pleaded guilty to misprision of treason, in violation of Section 3 of the Criminal Code (18 U. S. C. 3) and each was sentenced to imprisonment for five years.

In order, however, that said footnote No. 9 of Government's brief, based on the *Department's records*, may not create an erroneous *setting* of the facts and circumstances, the following supplement may be in order. It is based on the *records of defendants' counsel*, to wit:

Pursuant to said verdict of November 14, 1942, and

judgments entered thereon, the defendants, Hans Haupt, Otto Wergin, and Walter Froehling were sentenced to death, and the defendants, Erna Haupt, Kate Wergin and Lucille Froehling, were each sentenced to imprisonment for a period of twenty-five years and a fine of ten thousand dollars.

Pending appeal to the United States Circuit Court of Appeals for the Seventh Circuit, all six defendants were held without bail. On June 29, 1943, said judgments were reversed and remanded by said Circuit Court of Appeals, principally on the grounds of the refusal of the trial judge to grant separate trials to each defendant, and upon the decision in *McNabb et al* v. *United States*, 318 U.S. 332. The Circuit Court of Appeals stated in its decision, reported in 136 Fed. 2d, 661:

> "Inasmuch as these judgments are to be reversed, there is no occasion to relate the evidence with a view of ascertaining its sufficiency to sustain the judgments. A study of the record, however, is convincing that it is not sufficient as to one and perhaps more of the defendants. This is so, even though it be assumed that the incriminating statements were properly admitted."

Subsequently motions were made in the trial Court, citing therein the afore-stated excerpt from the Opinion of the Circuit Court of Appeals, requesting that the defendants Kate Wergin and Lucille Froehling be released from custody upon bail in a nominal amount, or that an early date be fixed by the Court for the separate trials of these two defendants. This motion was resisted by the Government, and the trial of Hans Haupt and thereafter of Walter Froehling were ordered to precede the trials of any of the other four defendants. New indictments, charging treason, had been obtained against all six defendants.

The trial of Hans Haupt was had thereupon and a verdict of "Guilty as charged in the indictment," rendered on June 9, 1944. During all this time all of the defendants, including the three women defendants, were being held in the Cook County jail without bail, on the charge of treason.

Subsequent thereto, the Government approached the defendant's counsel and suggested a compromise of the remaining treason cases of said five defendants, to the effect that Walter Froehling and Otto Wergin plead guilty to misprision of treason, and that all charges against the three women defendants, Erna Haupt, Kate Wergin and Lucille Froehling, be dismissed without right of re-instatement thereof; that Erna Haupt consent to denaturalization.

This compromise was accepted and carried into effect on July 22, 1944. Thereupon, Wergin and Froehling pleaded guilty to misprision of treason to obtain the release of their wives from custody and further prosecution.

8. *On Page* 25 of the Government's brief, the Government states as follows:

> "The witnesses Majerczak (R. 519-564) and Hamby (R. 564-584) were confined in the Cook County, Illinois, jail at the same time that petitioner was there (R. 520, 566-567). Beginning on July 21, 1942, they talked with petitioner concerning his case and concerning their own cases (R. 521-524, 568). *They testified* that it was after petitioner learned from a newspaper that Herbert had been executed that he began talking of him and his activities. (R. 523-525, 568-569)."

Following this introduction, the Government refers to many statements appearing to have been made by Hans Haupt to both of them.

It is true that the testimony of these witnesses by means of reference numbers can be identified to have been given only by Majerczak, *or* by Hamby, and not by *both* of them. However, the Government's statement afore-mentioned that "they testified" will create an erroneous impression concerning very prejudicial data, to the effect that *both* of these persons testified to *all* of such data. There was no reason to consolidate the testimony of these two witnesses, which was substantially different in each case.

9. On Page 30 and at other places of the Government's brief, it is indicated that the indictment charges that petitioner assisted the agent in obtaining employment, whereas Overt Acts Nos. 10 and 11 merely charge "accompanying" as the overt act.

10. At the bottom of Page 47 of the Government's brief, carrying over to Page 48, the Government maintains that it was proven by the direct testimony of *two* witnesses that Hans Haupt made arrangements for buying an automobile *for his son, Herbert.*

This statement is absolutely incorrect. There were only two witnesses who testified regarding the automobile transaction, namely, Farrell and Vinson, and Vinsons specifically states that there had been no conversation in his presence by Hans Haupt to the effect that he was purchasing the car for his son. (See Petition for Writ of Certiorari, pages 28-30.)

11. On Page 89 of Government's brief, the Government mentions overt acts 13 to 16, whereof Nos. 13 and 15 merely charge "accompanying". The Government contends that there were two witnesses to the remaining overt acts 14 and 16.

Overt Act No. 14 charges the signing of a financial statement, an order of purchase, and making an initial payment toward the purchase of an automobile. This act was not proven by two witnesses. (See Appellant's Brief in Circuit Court of Appeals, page 180.)

Overt Act No. 16 charges that the defendant "did purchase said automobile for said enemy, Herbert Haupt". No part of Overt Act No. 16 was proven by the direct testimony of two witnesses. The second witness, Vinson, even stated specifically that there was no conversation as to whether it was a car for Hans or for someone else. (Petition for Writ of Certiorari, pages 28 to 30.)

12: On Page 91 of the Government's brief, the Government states that FBI agent Robe testified that he " 'saw Herbert Haupt leave the Warner Motor Sales, driving the 1941 Pontiac coupe' which had just been purchased (R. 449)", etc.

Reference to Abstract of Record page 449 does not show that Robe testified about a car "which had just been purchased." FBI agents did testify that Herbert left the Motor Agency, driving a Pontiac automobile, and that subsequent thereto Herbert Haupt drove a Pontiac. However, such Pontiac was never identified with the automobile bought by Hans. Agent Robe had no knowledge of and did not testify concerning Hans Haupt having purchased a Pontiac or any other type of automobile.

13. In numerous places, throughout the Government's brief, statements are made, either directly or indirectly, to the effect that certain facts are admitted or conceded, or that certain matters or facts are undisputed. To clear the record, let it be said by us that the petitioner admitted nothing, conceded nothing and disputed everything relat-

ing to the proof of his *alleged* guilt of treason. His plea was not guilty and counsel could not, and did not, waive any of his rights.

Moreover, we have steadfastly maintained that all of the alleged overt acts were either legally insufficient or were not proved by the testimony of two witnesses to the same act as required by the Constitution. It was not incumbent upon the defendant to disprove the charges in the indictment, though the Government's counsel seem to imply that, if the defendant did not offer evidence to disprove any charge in the indictment, the Government's evidence need not be examined closely for its sufficiency.

General Verdict and Instructions 50 and 51.

It was conceded, in the supplemental brief *entitled "Memorandum of Authorities"*, filed by the Government after oral argument in the Circuit Court of Appeals (Record 878-879) "that the failure to prove or the insufficiency of any of the submitted overt acts would require a reversal of the conviction."

And in the opinion of his honor, Judge Evans, of the Circuit Court of Appeals upon the appeal herein, 152 Fed. 2nd 771, at page 774, it is stated:

> "There may be overt acts of legal sufficiency and established by the direct testimony of two witnesses, but the conviction will fall if the Court submitted to the jury certain alleged overt acts which were charged in the indictment but which were either legally insufficient or not sufficiently established to present a jury question, by the direct testimony of two witnesses."

This is a necessary result of the general verdict in the case at bar and of the fact that the trial court, in instructions 50 and 51, instructed the jury to the effect that proof

of *any one* of the submitted overt acts would warrant a conviction of the defendant. It is not an error that may be waived by counsel failing to object to the forms of verdict submitted by the Court to the jury, nor even by defendant's counsel signifying approval of the forms of verdict.

Because of the fact that Instructions Nos. 50 and 51 (Record 39) were given to the jury and only a general verdict was returned without special findings as to the acts on which it rests, the principle stated in footnote No. 45 of the *Cramer* case applies *a fortiori* to the case at bar, viz:

> "The verdict in this case was a general one of guilty without special findings as to the acts on which it rests. Since it is not possible to identify the grounds on which Cramer was convicted, the verdict must be set aside if any of the separable acts submitted was insufficient."

On the reasoning presented, we believe that instructions Nos. 50 and 51 (Record 39) constitute reversible error in view of the general verdict, if *any one* of the submitted overt acts was *legally insufficient* to constitute an act of treason.

It seems that the same conclusion should prevail in the event of *insufficient proof* as to *any one* of the submitted acts.

The defendant's demurrer to each of the acts charged in the indictment was overruled by the trial court. Defendant also moved, at the close of the Government's evidence, and again at the close of all of the evidence, for a directed verdict as to each separate act charged in the indictment, and was overruled by the Court. There can be

no question about the preservation of defendant's objections and exceptions with respect to these rulings.

Four of the submitted overt acts (Nos. 10, 11, 13 and 15) charge as the overt act merely the act of "accompanying". Although a traitorous intent is ascribed to each one of the four overt acts, nevertheless, the overt act in each case is nothing else *but accompanying.*

These four overt acts are legally insufficient under the rulings of this Honorable Court in the *Cramer* case.

Essentially, the same charge of *accompanying* (plus *conferring, treating* and *counselling with*) Werner Thiel, an enemy of the United States was made in Overt Act No. 2 of the *Cramer* case, as was made in our case in Overt Acts Nos. 10, 11, 13 and 15.

As in our case, Overt Act No. 2 in the *Cramer* case charges that the defendant's acts were done for the purpose and with the intent to give aid and comfort to the enemy, Werner Thiel. A comparison shows that Overt Act No. 2 in the *Cramer* case charged as much action and more than is charged against the defendant in the case at bar. Even though the proof in the *Cramer* case established all of the facts included in the Overt Act No. 2, this Honorable Court held that it was insufficient to support the judgment of conviction and reversed the case, without remanding it.

There are six harboring charges (viz: Overt Acts Nos. 12, 17, 20, 21, 22 and 23) all of which, except Overt Act No. 17, rested entirely upon circumstantial evidence instead of direct testimony by two witnesses and were clearly not proved as required by the Constitution. The remaining harboring act, No. 17, as proved, was legally insufficient because it merely showed by two witnesses that petitioner's

son, Herbert Haupt, the enemy, for the period of two hours on the evening of June 23, 1942, in the home of his parents, met the woman he was engaged to marry. He talked to her there. Using the language of the United States Supreme Court in the *Cramer* case, merely changing the name of the enemy, we say of this overt act:

> "And without the use of some imagination, it is difficult to perceive any advantage which this meeting afforded to Herbert Haupt, as an enemy, or how it strengthened Germany or weakened the United States in any way whatever."

We contend that this Overt Act No. 17 was not an act of treason.

There remain only Overt Acts Nos. 14 and 16, relating to the purchase of an automobile.

Overt Act No. 14 charged that defendant "signed a financial statement and an order for the purchase of an automobile, and made an initial payment" thereon, "with the intent and purpose of procuring an automobile for the said enemy, Herbert Haupt", etc.

We contend that Overt Act No. 14 was not proved by two witnesses.

On Number 14, there was only one direct witnesses to the signing of the financial statement and purchase order and the making of the down-payment by the defendant (Government witness Farrell). The other witness (Vinson) did not testify that he saw the defendant sign the papers or pay the deposit. He saw these items later. He was, however, introduced to the defendant and saw the defendant at the sales agency on that occasion.

For a more complete statement of the testimony bearing

upon this act, we refer to Appellant's Brief in the Circuit Court of Appeals, Pages 18 to 22.

Overt Act No. 16 charges specifically that an automobile was bought by petitioner *for the enemy, Herbert Haupt,* and as to this allegation, the following will show conclusively that only one witness testified that Hans Haupt bought the automobile for his son. That witness was the automobile salesman, Mr. Farrell. Mr. Vinson, the sales manager, the second witness, testified as follows:

Question of Mr. Finn: Just a minute, do you know who purchased the car?

A. Yes, Hans Haupt.

Q. And was there any conversation as to whether it was a car for Hans or for someone else?

A. No. (Record, page 312.)

We believe that we have shown that all of the submitted acts were either insufficient to constitute treason, or were not proved by two witnesses, as required by the Constitution. The insufficiency of, or failure of proof upon a single one of these acts is enough to require a reversal of this case.

We contend that the instruction to the jury, that only one overt act need be proven, to find the defendant guilty, was, in view of the general verdict, an assurance to the jury that each one of the submitted overt acts was legally sufficient. Accordingly the jury had a right to, and possibly did, select merely one overt act, not subject to much controversy among themselves, for the purpose of reaching the verdict of guilty. Perhaps it was overt act No. 10, charging that Hans Haupt accompanied Herbert to the home of Grunau.

All sources used to prove traitorous intent consisted of improperly admitted evidence.

For the purpose of proving traitorous intent, the Government submitted the following sources therefor, which we maintain were improperly admitted as evidence, to wit:

(a) Pre-war statements of the petitioner, some of which were made as much as six years prior to our entry into the war.

(b) Withdrawn overt acts.

(c) Alleged confessions or admissions of the petitioner made out of Court to FBI agents, Hirsch and Robe and to the convicts, Majerczak and Hamby, while the petitioner was in custody.

Not only was this improper evidence before the jury for their consideration ,but they were expressly instructed, with respect to each of these items of evidence, that the jury might consider such evidence in determining the issue of the intent of the defendant in commiting the overt acts submitted to the jury. Instructions 58 and 60 both charge the jury to consider the pre-war statements of the petitioner in determining the question of his treasonable intent upon the submitted overt acts.

Instruction No. 49 permits the jury to consider the withdrawn overt acts in determining the question of the intent of the defendant with respect to the submitted overt acts.

Instruction No. 61 charges the jury to consider the alleged admissions made by the defendant outside of Court, while he was in custody, in determining the question of the intent of the defendant with respect to the submitted overt acts.

These matters are more fully discussed on Pages 61-63 and 73-77 in the Petition for a Writ of Certiorari, herein. This evidence which we contend was highly improper and prejudicial to the defendant played a very important part in convicting the defendant.

We contend that admission in evidence of alleged out-of-Court confessions, or oral statements made by the defendant, violated the right of the accused, expressly set forth in the Constitution of the United States for his protection in a trial for treason.

The Constitution provides "No person shall be convicted of treason unless on * * * or on confession in open Court."

In our judgment, this provision absolutely prohibits the use of out-of-Court confessions to gain convictions for treason.

If such confessions can be used to prove traitorous intent, then they are being used to convict of treason.

Confusion of Jury (and of the United States Circuit Court of Appeals, and of the Government in the argument in Government's Brief), caused by unnecessary cumulative evidence, admitted for the sole purpose of proving the enemy status of Herbert Haupt, an important factor in the Jury's verdict of Guilty against HANS HAUPT.

Possibly one of the most damaging factors interfering with the right of the accused to a fair trial is found in the testimony and exhibits which were admitted, over objections duly made, for the sole purpose of proving the enemy status of Herbert Haupt.

Witness Burger, one of the saboteurs, was allowed to testify in great detail concerning a sabotage school in Germany, which he and Herbert Haupt attended; concerning the course of training, concerning exhibits, being instruments of sabotage, their construction, use and effect. He also testified regarding his trip from Germany to the United States in a submarine, although Herbert was not on such submarine. He further testified about oral conversations in Germany regarding instructions to Herbert Haupt and others concerning their mission in the United

States. Among these instructions to Herbert was the order to purchase an automobile to be used to facilitate carrying on sabotage, to obtain employment with the Simpson Optical Company, where Herbert had worked before going to Germany, to get information about the plant and the Norden bombsight, and not to see his parents upon his coming to the United States. (This last order is omitted from the Government's brief herein.) There were still more instructions.

Then there also was the witness, Leibl. He met Herbert Haupt, while he, Herbert, was in Germany, attending the sabotage school. Leibl, in his testimony, led by the Government's questions, mentioned the German Gestapo, the German Propaganda agency, and that Joseph Goebbels was the chief thereof, Lieutenant Kappe, Chief of the sabotage school, and that the first thing Herbert Haupt did, upon meeting Leibl, was to raise his hand, give a German salute, and say: "*Heil, Hitler.*"

Then there were various FBI agents who testified how and where they found various cases containing articles for sabotage, which were introduced in evidence by means of photographs or the actual objects; and how these detonators, incendiary bombs, blocks of TNT, etc., worked.

Time and again, it was particularly pointed out by the Government, when petitioner's counsel objected to this sort of testimony, *hearsay evidence,* that the Government offered it only to *serve to establish the enemy status of Herbert Haupt, and for no other purpose,* and it was admitted by the court subject to that condition, and then only on the grounds of *necessity for the Government* to prove the enemy status of Herbert Haupt.

However, this hearsay evidence, although so restricted,

was used to prove the traitorous intent of Hans Haupt, to wit:

More than one fifth of the entire Government's testimoney was taken up by these many details, offered merely to *prove the enemy status of Herbert Haupt,* and specifically *restricted* thereto. There was no need for such extensive testimony, as counsel for the accused had expressly admitted in his opening statement to the jury practically each material allegation testified to by these witnesses, for the purpose of precluding the introduction of cumulative evidence of this character, which would necessarily have the tendency of confusing the jury. (Abstract of Record 102 to 103)

We cannot state that it was the Government's intention to confuse the jury, but it is difficult, for instance, to understand why the Government brought in the testimony of Leibl, and sought and obtained by specifically directed questions, such answers as related to "Goebbels," "German Propaganda Agency," "German Gestapo," and of Herbert's German salute, by saying "Heil Hitler!"

We do not know how harmful this testimony was to a fair trial, but covering more than one fifth of the entire Government's testimony, it cannot have been without effect, beyond the mere point of proving Herbert's status as an enemy. It may be assumed that it confused the jury and that in some manner the jury looked upon this extensive testimony *as a source for traitorous intent of Hans Haupt,* instructions to the contrary notwithstanding.

Such assumption seems to be quite reasonable, if we find, as we do, that this extensive testimony confused in just such manner not only the United States Circuit Court of Appeals, but also the Government, in the preparation of

its brief herein. Both the Circuit Court of Appeals, as well as the Government, used this very testimony for the purpose of *proving a traitorous intent of Hans Haupt*, though it was restricted to proof of the *enemy status of Herbert Haupt*, viz:

The majority opinion in the United States Circuit Court of Appeals states on Page 790, 152 Fed. Reptr. Second Series, as follows:

> "It is defendant's argument that the purchase of the automobile was an innocent act in its entirety—the father had been using the son's Plymouth car during his absence, using it hard, and upon the son's return immediately went about to replace it with another car. While this explanation has plausibility, it does not comport with the *facts* actually disclosed. (Emphasis supplied.)
>
> One of the instructions Herbert received was to obtain a car to facilitate transportation of the explosives from the beach in Florida, for delivery to the various points of sabotage, and as a means of travel for the members of the expedition. The purchase of the car was arranged for within a couple of days of Herbert's return—showing urgency of his duty. The old Plymouth car had not become obsolete, in fact, it was used by the Haupt family during the week of surveillance. There would not have been the rush to buy the new car, without the pressing need for it."

We may notice that the Honorable Circuit Court of Appeals now refers to evidence restricted by offer of the Government and ruling of the trial court, to the enemy status of Herbert Haupt, as one of the "facts" in the case, for the purpose of proving a traitorous intent of Hans Haupt in connection with a submitted overt act.

The same error was committed by Government counsel, to wit: (Government brief, page 48:)

"The sufficiency of these acts as acts giving aid and comfort is even more sharply underscored; for Herbert had been instructed by his German superiors to get employment at the Optical Company and to get an automobile (supra, pp. 7-8). Here petitioner's acts of accompanying Herbert directly and substantially furthered the success of Herbert's sabotage mission."

(Government brief, pages 48 to 49:)

"And in their setting here the arrangements for and purchase of the automobile for Herbert were not only abstractly acts of aid and comfort, they assisted Herbert in carrying out the specific orders of his superiors in Germany, to procure an automobile for the use of his fellow saboteurs, "to remove our explosives from the place where they were * * * hidden," and "to give us range for our operations" (R. 115, 116). It is difficult to think of anything that petitioner could have done for Herbert during those first few days after his return to Chicago that added more to the success of the saboteurs' mission than just precisely this purchase of an automobile."

(Government brief, pages 49 to 50:)

"Similarly, while assisting an enemy spy to obtain employment of any kind is normally an act of aid and comfort to him, since it enables him to mingle without suspicion with the population and thus to conceal his identity, petitioner's acts here which asissted Herbert to get employment showed, when considered in their setting, more than just such generalized help. For Herbert had been specifically directed to get particular employment, with the Simpson Optical Co., for two reasons: first, to get information about the Norden bombsight which was being manufactured there, and second, to get information about the plant so that it could be more effectually blown up (R. 115, 120, 159, 160). Consequently, in this instance also, petitioner's acts were directly contributing to the success of Herbert's mission as that mission had been prescribed by the sabotage school in Germany."

(Government brief, pages 151:)

> "It was, of course, an essential part of the Government's case to prove that Herbert was an enemy agent who was in this country for the purpose of performing a hostile mission. The nature of the mission was the setting in which, under the *Cramer* decision, the overt acts performed by petitioner had to be judged. And the character of the mission was a vital element in determining, not only petitioner's guilt, but the gravity of his offense in giving aid and comfort to the enemy."

The foregoing certainly proves that evidence *restricted to solely prove the enemy status of Herbert Haupt*, admittedly *hearsay* evidence, was used by the Circuit Court of Appeals and by the Government to *prove a traitorous intent of Hans Haupt* in connection with submitted overt acts. Can we assume, that the jury was better able to overcome the confusing effect of this extensive testimony, in a trial lasting almost three weeks? We contend that the admission of such amount of cumulative hearsay evidence, to prove one single point, denied the accused the right to a fair trial, and *that a traitorous intent was found by the jury from evidence, which was inadmissible for such purpose.*

In connection with the foregoing, it may be noted that the defendant was refused the benefit of an instruction (No. D-8) informing the jury of the fact that Burger had been convicted of a felony and that this fact should be considered by the jury upon the matter of his credibility as a witness. The refusal to give this instruction for the defendant is also assigned as error.

Errors in Instructions Concerning Intent.

The submitted overt acts in themselves are of harmless nature, and there was nothing in the actions of petitioner, while his son was in Chicago, after his return from Germany, to show that any one of such acts was performed with any other intent than is dictated by paternal love towards an only child. Let us assume that Hans Haupt knew or vaguely guessed that his son had been sent here by Germany on an unlawful errand. Is it not natural for a father and a mother to desire their son to abandon everything that would be unlawful? Is it not natural for parents to see their son work instead of idle? Is it not natural for parents to purchase for their son an automobile in which to go to work, and for pleasure, particularly where the son had an automobile which had in the meantime been put to hard use by the father, as a painter's truck?

Who is there to say *beyond a reasonable doubt*, that any of such acts (even if charged and properly proven) were committed by petitioner with a traitorous intent?

We contend that instruction No. 37 (Record 35) of the charge to the jury correctly states the law with reference to the overt acts, in view of the relationship of father and son. We also contend that instructions Nos. 53, 54, and 63 (Record 40, 42) constitute error. These last named three instructions practically cancel out instruction No. 37, and in effect state that whatever Hans Haupt did in his relationship towards his son, an enemy, must have been done with traitorous intent.

We submit that the testimony offered on behalf of the petitioner (Abstract of Record 597 to 651) shows that the accused was a man accustomed to daily hard toil, and that he continued to be engaged therein day after day, including

Sunday, while his son Herbert was in Chicago, up to the day of arrest of Herbert. There is nothing to show in that record that petitioner planned sabotage or traitorous acts. It showed his continuous devotion to his customary work, in discharge of his duty as a breadearner for his family.

As a matter of fact no criminal act was shown on the part of the petitioner. Only by ascribing a treasonable intent to every day acts of any parent toward his son, does the Government seek to make out a case of treason against the petitioner here.

CONCLUSION.

We have not mentioned other errors and points relied upon, which are set out in the Petition for Writ of Certiorari and in Appellant's brief filed in the Circuit Court of Appeals. We respectfully refer the Court to said petion and brief for a discussion of such matters, which petitioner prays may also be considered by this Honorable Court herein.

As in the *Cramer* case, we believe that this case should be reversed without remanding. The petitioner has been in custody without bail ever since his arrest in July, 1942. He is a sick, broken man, and rightly or not, he has suffered greatly for the sins of his son, Herbert.

Respectfully submitted,

PAUL A. F. WARNHOLTZ,
Counsel for Petitioner.

FREDERICK J. BERTRAM,
Of Counsel.

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Supreme Court, U.S.
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No. 900 49

In the Supreme Court of the United States

OCTOBER TERM, 1945

HANS MAX HAUPT, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

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OPINIONS BELOW

The majority and dissenting opinions (II R. 9)[1] and the dissenting opinion of Judge Major on denial of the petition for rehearing (II R. 33) are reported at 152 F. 2d 771.

[1] The record before this Court is in three parts, each of which is separately paginated. We shall refer to the stenographic transcript of the testimony at the trial as "R," to the volume containing the pleadings and proceedings in the district court as "I R," and to the volume containing the proceedings in the circuit court of appeals as "II R."

JURISDICTION

The judgment of the circuit court of appeals was entered December 20, 1945 (II R. 10), and a petition for rehearing (II R. 11–29; see also II R. 31) was denied January 24, 1946 (II R. 33). The petition for a writ of certiorari was filed February 28, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTIONS PRESENTED

The principal questions presented by the petition for a writ of certiorari are:

1. Whether overt acts Nos. 10, 11, 12, 16, 20, 21, 22, and 23 are each supported by the testimony of two direct witnesses.

2. Whether the trial court erred in instructing the jury in connection with the twelve overt acts submitted to them that it was only necessary for the Government to prove by two witnesses the performance of any one of the overt acts.

3. Whether the trial court erred in receiving in evidence, restricted solely to the issue of treasonable intent, (a) petitioner's prewar statements showing an intense devotion to Hitler and Nazi Germany, (b) petitioner's extra-judicial admissions, (c) and the testimony of only one witness concerning overt acts which were not submitted

to the jury; and whether it was error to receive the testimony of Burger, a convicted saboteur, to show the enemy status of Herbert Haupt.

4. Whether reversible error is involved:

a. In the arguments to the jury of government counsel;

b. In permitting the jury to take a copy of the indictment and of the instructions to the jury into the jury room;

c. In reading to the jury, at their request after they had retired, the testimony of one defense witness and two government witnesses; and

d. Whether the verdict of the jury was the result of passion, prejudice, and war hysteria.

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

Constitution, Art. III, sec. 3:

> Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

* * * * *

Section 1 of the Criminal Code, 18 U. S. C. 1:

> Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason.

STATEMENT

Petitioner was indicted (I R. 3–15) in the District Court of the United States for the Northern District of Illinois, for treason.[2] The indictment alleged that from June 17, 1942, to July 17, 1942, petitioner, a person who owed allegiance to the United States, unlawfully adhered to the enemies of the United States, the Government of the German Reich, with which the United States was at war. It was alleged that on June 17, 1942, Herbert Haupt, an agent of the German Reich, came to the United States and served as a secret agent, saboteur, and spy, and that petitioner, knowing of Herbert's mission, adhered to the enemy and gave it aid and comfort by maintaining and harboring Herbert; by meeting with and assisting Herbert in matters connected with Herbert's service to Germany; in his countenancing that service; in carrying out requests and instructions of Herbert in connection with that service; in purchasing an automobile for Herbert; in attempting to procure employment for Herbert; in furnishing false information regarding the identity and mission of Herbert; and in receiving, safeguarding, and concealing property and funds of Herbert. Twenty-

[2] Petitioner previously had been convicted of treason under another indictment which was predicated on the same acts, but the conviction was reversed by the Circuit Court of Appeals for the Seventh Circuit, principally because of the applicability of the *McNabb* doctrine, 318 U. S. 332, to the case. *United States* v. *Haupt*, 136 F. 2d 661.

nine overt acts were alleged to have been committed by petitioner with the intention of adhering to the enemy and giving it aid and comfort (I R. 7–15), but only twelve were submitted to the jury (see *infra*, pp. 9, 29).

Petitioner was tried before a jury and was found guilty (I R. 97); he was sentenced to imprisonment for the remainder of his life and to pay a fine of $10,000 (I R. 110).[3] Upon appeal to the Circuit Court of Appeals for the Seventh Circuit, the judgment was affirmed, one judge dissenting (II R. 10, 33).

We think that the majority opinion of the circuit court of appeals fairly sets forth the evidence in support of the conviction, but we shall, nonetheless, briefly summarize it with appropriate record references to aid the Court in passing on the questions posed by the petition for a writ of certiorari.

Petitioner is the father of Herbert Haupt, one of the eight saboteurs convicted by a military tribunal and who was thereafter executed. See *Ex parte Quirin*, 317 U. S. 1. Petitioner was born in Germany in 1894;[4] he married there; and

[3] In a memorandum opinion the trial judge stated that on the evidence adduced at the trial petitioner deserved a sentence of death, but that the life sentence was imposed in deference to a letter from the jury urging the court to be merciful to petitioner (I R. 112–113; see also, I R. 99).

[4] There was no dispute at the trial that petitioner is a naturalized citizen; his naturalization certificate was received in evidence as Government Exhibit 65 (R. 722).

his son Herbert was born of that marriage in Germany in 1919. He came to this country in 1923, his wife and son followed two years later, and thereafter they lived in or about Chicago, Illinois. (See R. 11–12, 47.) In the spring of 1939 the son, Herbert, obtained a job with the Simpson Optical Co. in Chicago, which is engaged in the manufacture of all kinds of lenses for instruments, including parts for the Norden bombsight (R. 341–343). The evidence summarized below shows that in the spring of 1941 Herbert left his home and job and with the aid of the German Consul in Mexico went to Japan and from there to Germany, where he entered the employ of the German Government and was trained for sabotage work in this country.

HERBERT'S ENEMY STATUS

The acts of treason charged against petitioner are predicated on the proposition, which was undisputed at the trial (see R. 44–46), that Herbert was an enemy agent. The Government established the enemy character of Herbert principally through the testimony of Ernest Peter Burger, one of Herbert's fellow saboteurs. Burger detailed (R. 58–192) the intensive training in sabotage that Herbert and his seven co-saboteurs received in Germany. Essentially, his testimony revealed the facts which are set forth in this Court's opinion in *Ex parte Quirin, supra*, 317 U. S. at 20–22, and for purposes of brevity we

shall not restate them here. Suffice it to say that before the eight saboteurs left Germany, they were instructed concerning their activities in this country. The general strategy was that each saboteur, after he had illicitly landed in the United States, should devote three or four months to establishing his identity. Each was to establish himself in a community and engage in the same work that he had previously been doing. (See R. 76–77, 111.)

Herbert's specific instructions were as follows:

1. To use his own name only in a vicinity or among people where he was known (R. 73);

2. Upon landing in the United States to proceed directly to Chicago (R. 73);

3. To procure an automobile for the use of his fellow saboteurs (R. 73); "the purpose for purchasing an automobile was to, first, remove our explosives from the place where they were caged, or hidden or buried, back to a place which in the meantime would be prepared. The second purpose for a car was to give us range for our operations" (R. 75);

4. "To procure information and details concerning the optical industry in Chicago, especially the Norden bombsight, and furnish us [the saboteurs] information * * * in order to equip us to carry out our assignments (R. 74);

5. To register under the Selective Training and Service Act (R. 74);

6. "To contact trustworthy political people and to deposit a certain amount of money with them as a contingent fund for our groups in case of emergency (R. 74);

7. To procure information "of the incendiary layout" and about "vital machines and parts" in the Simpson Optical Co. of Chicago (R. 83).

Before leaving Germany the saboteurs were divided into two groups, each one taking one-half of the United States for its operations. The witness Burger was in group 1 and Herbert was in group 2 (R. 78–80). The assignment sheet of group 1 stated that the group would receive its information concerning optical industries from Herbert, even though he was a member of group 2 (R. 79).

The saboteur group was fully equipped with necessary clothing and materials and with large sums of our money, and they came to this country by submarine (R. 87–109, 131–147). The evidence traced the landing of Herbert's group in Florida, the caching of their sabotage equipment on the beach, their temporary stay in Florida, and Herbert's ultimate arrival in Chicago (R. 192–202, 202–205, 207–216, 249–261, 263–267, 268–271, 274–277). Herbert carried $5,000 in $50 bills in a money belt and $400 in bills of smaller denominations and a zipper bag in which $10,000 was concealed (R. 91, 92, 121–122).

Upon his arrival in Chicago, Herbert immediately contacted his parents, and he lived with them until he was arrested. (See *infra*, pp. 13–19.) The overt acts charged against petitioner relate to the events which transpired from the time Herbert arrived in Chicago until he was taken into custody by the F. B. I. a week later.

THE OVERT ACTS SUBMITTED TO THE JURY[5]

The trial court submitted twelve of the twenty-nine overt acts alleged in the indictment (I R. 7–15) to the jury as possible overt acts of treason within the meaning of the Constitution. Generally stated, two of the overt acts (Nos. 10 and 11) charged that petitioner assisted Herbert in obtaining employment so that he might conceal his identity and mission; six (Nos. 12, 17, 20–23) charged that petitioner harbored Herbert for six successive days from June 22, 1942, to June 27, 1942, inclusive; four (Nos. 13–16) charged that petitioner accompanied and assisted Herbert in the purchase of an automobile. The evidence in support of these overt acts may be summarized as follows:

Overt Act. No. 10—Overt Act No. 10 charged that on June 22, 1942, petitioner accompanied Herbert to the home of one Andreas Conrad Grumau for the purpose of assisting Herbert in

[5] See *infra*, pp. 20–28, for a summary of evidence, other than that revealed by the overt acts submitted to the jury, showing petitioner's treasonable intent.

securing employment, so that he might conceal his identity and mission and so that he might pursue his mission.

Grunau testified that he was the superintendent of the Simpson Optical Manufacturing Company, which was engaged exclusively in war production during the war and which produced parts for the Norden bombsight (R. 341–342). He belonged with petitioner to a German singing society and he had known petitioner since 1937 (R. 343, 348). Herbert had worked for the Simpson firm from 1939 to 1941 (R. 344).

Grunau said that on the evening of June 22, 1942, he came home at about 8 o'clock and found Herbert and his parents waiting for him (R. 344). In response to his inquiry, Herbert, in the presence of petitioner, told Grunau that he had been in Mexico digging gold (R. 345). Herbert assured Grunau that he had registered under the Selective Training and Service Act (R. 345–346), and shortly thereafter, in the presence of his parents, Herbert asked Grunau for a job with the Simpson Optical Co. (R. 347). He was informed that he should come to the plant and fill out an application (R. 347). Herbert inquired whether he could obtain a draft deferment, and he was told that the matter would be handled by the "front office" (R. 347–348).

Mrs. Grunau testified (R. 353-360) that the Haupts came to her home by automobile sometime

after 7 o'clock in the evening. Herbert told her that he had come from Mexico and that he wanted to get his old job back. She corroborated her husband's testimony that when he came home the Haupts were waiting for him and that in the presence of his parents Herbert explained to Mr. Grunau that he had been in Mexico.

Edith McGowan, a daughter of the Grunaus, testified that she was in her parents' home when the Haupts came there and that petitioner was driving the automobile in which the Haupts came to their home (R. 361–367).[4]

Overt Act No. 11.—This overt act is of the same nature as the previous one, and names one Heinrich Koch as the person whom the Haupts visited in quest of a job for Herbert.

Koch testified (R. 368–373, 421–424) that he was a foreman for the Simpson Optical Company; that he knew petitioner; and that Herbert had worked in his department from 1939 to 1941. At 9:30 p. m. on June 22, 1942, petitioner, Herbert, and Mrs. Haupt came to his home. Herbert explained to Koch that he had been in Mexico and that he wanted to get back his job at the Simpson plant; that he wanted to work in defense work. When Koch questioned Herbert concerning his

[4] The testimony of the Grunaus was corroborated by the testimony of several F. B. I. agents who were surveilling Herbert and who observed petitioner, as well as Herbert and Mrs. Haupt, leave his home and drive to the Grunau residence (R. 706–708, 725–727, 740–742, 751–754, 770–771, 781–782).

draft age, petitioner said, "I sent him all this morning to the draft board and to the F. B. I." (R. 423). When Koch questioned Herbert about where he had been, saying that he thought he had been in Japan, Herbert said, in the presence of petitioner, "we was only a little bit sailing" (R. 423). Herbert also spoke to Koch about a draft deferment (R. 424). Mrs. Koch testified similarly that petitioner, Herbert, and Mrs. Haupt came to the Koch home "to see my husband on business" and that the business concerned a job for Herbert (R. 426–427).

The F. B. I. agents, who were trailing Herbert, testified that they observed the Haupts leave the Grunau residence and go by automobile, with petitioner driving, to the Koch residence, and that at the conclusion of the visit to the Koch home, petitioner drove Herbert and Mrs. Haupt to their home, and he then drove away (R. 708–709, 727–729, 771–773, 781–783).

Overt Acts Nos. 12, 17, 20–23.—Each of these overt acts charges in substantially the same terms that on a specified date petitioner "harbored and sheltered the said enemy Herbert Haupt at the home of Hans Max Haupt and Erna Haupt, 2234 N. Fremont St., Chicago, Illinois, well knowing that the said enemy was an agent of the Government of the German Reich in the United States to commit sabotage, act as a spy, and perform other services for said Government as aforesaid, all with the intent and for the purpose of assist-

ing said enemy Herbert Haupt in carrying out his mission as an agent of the Government of the German Reich as aforesaid."

Petitioner and his wife lived in a front apartment on the third floor of a building at 2234 North Fremont Street. The three-story building is owned by one Kluczyk, who was a witness. It consists of six apartments, three in the front half of the building and three in the rear. The three front apartments are not connected with the rear apartments in any way; the front apartments can be entered only through the front entrance to the building, and the rear apartments must be entered through an entrance at the rear of the building. Of the three front apartments, the Kluczyks lived on the first floor, the Probsts on the second floor, and the Haupts on the third floor. Both the Kluczyks and the Probsts testified to these facts and that Herbert at no time lived in their apartments. (R. 278–281, 312–314, 323–326, 327–328, 352–353.)

June 22, 1942.—From the testimony of never less than two F. B. I. agents, it appeared that surveillance of the Haupt residence was started at about 10:30 a. m., Monday, June 22, 1942, and continued until Herbert's arrest on June 27; that Herbert was first seen there on June 22 at approximately 12:25 p. m., when he alighted from a taxicab that had stopped in front of the building in which petitioner lived; that Herbert walked up the front steps of the building and into the

front entrance; and that he was observed leaving the front entrance of the building at 1:45 p. m. (R. 685–688, 691–693).

At 5:15 p. m. Herbert reentered the front door to the building in which the Haupts lived (R. 589, 693–694). At 7:30 p. m. that same evening, petitioner, accompanied by Herbert and Mrs. Haupt, were observed emerging from the front entrance. They entered petitioner's automobile, and Herbert drove the car around the corner, at which point petitioner took over the operation of the automobile. They were followed by the F. B. I. agents, as we have shown *supra*, pp. 11–12, to the homes of Grunau and Koch, and later in the evening they returned to the Haupt residence, Herbert and Mrs. Haupt going into the building and petitioner thereafter driving away. Shortly after Herbert and Mrs. Haupt entered the building, the lights in the Haupt apartment were extinguished. (R. 705–709, 725–729, 739–742, 751–755, 771–774, 781–783.)

Mrs. Kluczyk, the wife of the owner of the building, testified that Herbert had lived with his parents prior to the time he left the country; and that she did not see him again until about 11 a. m. on June 22, 1942, in front of the building. On the evening of June 22, Herbert, petitioner, and Mrs. Haupt stopped in the Kluczyk's apartment for a short visit before leaving the building. At that time Herbert stated, in the presence of petitioner, that he had been in Mexico, South America, and

"all over." (R. 282, 290–294; see also the similar testimony of two other witnesses, R. 313–322, 328–340.)[1]

June 23, 1942.—At 12:20 p. m. on June 23, Herbert and Mrs. Haupt were observed emerging from the front entrance to the building (R. 695). At 5:15 p. m. Herbert returned and entered the building (R. 697, 730, 810). At about 6:00 p. m. petitioner, Herbert, and Mrs. Haupt came out of the front entrance and proceeded in the Haupt automobile to a restaurant, where they remained for forty-five minutes. When they left the restaurant, Mrs. Haupt separated from the two men, and they proceeded to an automobile sales agency (see *infra*, p. 19). Petitioner and Herbert later drove to their home. Petitioner entered the building, but Herbert walked to a specified street corner. Petitioner came out of the building shortly thereafter and met Herbert at the corner. Both men shortly thereafter returned to the Haupt residence. (R. 698–702, 730–732, 784–789, 810–814.)

[1] Mrs. Kluczyk also testified that she had known the Haupt family for twelve years (R. 282); that Herbert left home in June 1941 (R. 283); that at a later date Mrs. Haupt showed her a telegram petitioner had received from Herbert in Tokyo (R. 285); that on December 7, 1941, in the presence of petitioner, Mrs. Haupt told her that they were sending a telegram to Herbert in Tokyo (R. 286–287); and that on June 9, 1942, Mrs. Haupt asked her to tell petitioner, when he returned to work, to come to his sister-in-law's house (where Herbert then was) (R. 289–290).

In the meantime, between 7:30 p. m. and 8:00 p. m., Gustave Zerner, a friend of petitioner's (R. 499–500, 502), arrived at the Haupt apartment (R. 503). Shortly after he entered, Herbert and petitioner also entered together (R. 504). Mrs. Haupt had supper waiting for petitioner and Herbert, so Zerner remained in the parlor while the three Haupts ate in the kitchen (R. 506–507). Meanwhile Mrs. Saure (at that time Miss Melind, a friend of Herbert's) had also come to the Haupt apartment (R. 507). When the meal was completed Zerner joined the elder Haupts in the kitchen and Herbert joined Mrs. Saure in the parlor (R. 507–508).

At about 10 or 10:30 p. m., Herbert and Mrs. Saure left the Haupt apartment (R. 491, 789, 814, 823). They proceeded in the Haupt automobile to a tavern. Later, Herbert drove Mrs. Saure to her home and then returned to the Haupt building (R. 703, 733, 824). As on the previous evening, within a few minutes after Herbert entered the building the lights in the Haupt apartment were extinguished (R. 834).

June 21, 1942.—At 7:00 a. m. on this date, petitioner emerged from the apartment building and drove off in his automobile, which Herbert had parked in front of the building when he returned home the previous evening (R. 735). Shortly after noon, two witnesses who were in the Kluczyk apartment on the first floor heard Herbert and Mrs. Haupt come down the stairs from

the Haupt apartment (R. 295, 335–336). Herbert waited in front of the building for a taxicab and drove off in it (R. 736, 815). At 5:30 p. m. Herbert returned and was observed entering the front entrance of the building (R. 757). At 6:00 p. m. petitioner and Herbert came out of the building and entered petitioner's automobile and drove to an automobile agency (see *infra*, p. 17) (R. 743). Shortly thereafter, Herbert was observed driving away from the automobile agency with a newly acquired Pontiac automobile (R. 744). He arrived at the apartment building at 6:35 p. m. and was observed entering the front door of the building (R. 744, 760). Ten minutes later he left the building and drove to two places, returning at 9:15 p. m. He did not enter the building, but drove off again and returned at 1:00 a. m., June 25 (R. 744–746, 760–762). Shortly after Herbert entered the building the lights in the Haupt apartment were extinguished (R. 710–711, 768–769).

June 25, 1942.—At 7:00 a. m., petitioner was seen to emerge from the front entrance to the building. He stood in front of the building, talking to one Carl Eggert, who was waiting for him. While they were conversing, Herbert was also observed coming out the front door (R. 774–775, 597–598). He drove away in his newly acquired Pontiac automobile, and returned to the Haupt building at 4:20 p. m. (R. 736, 747, 777). He left the building at 6:45 p. m., wearing different

clothing than he had on when he entered (R. 777). He returned at midnight, and, a few minutes after he entered the building, the lights in the Haupt apartment were extinguished (R. 825, 833).

June 26, 1942.—At 7:00 a. m. petitioner was seen leaving the apartment building, and at 9:00 a. m. Herbert came out dressed in different clothing than that which he wore when he entered the building the previous night (R. 826, 830, 835). At 5:00 p. m., petitioner returned, and at 6:00 p. m. Herbert returned, both of them entering the building through the front door (R. 778–779, 817). At 7:15 p. m., petitioner left the premises, and at 8:00 p. m. Herbert and Mrs. Haupt were seen leaving the building (R. 779). Herbert returned at 1:50 a. m., at which time he drove up in front of the Haupt home, parked the Pontiac coupe, sat in front of the residence, talked with another young man, and then entered the building (R. 737–738, 747, 818). When Herbert entered the building the lights in the Haupt apartment were not on; they were put on a few minutes later and were extinguished in about ten minutes (R. 828).

June 27, 1942.—As we have shown above, Herbert entered the Haupt building at 1:50 a. m. At 9:05 a. m. he emerged from the building, got into his car, and drove for a few blocks. At this point the FBI agents stopped him and placed him under arrest. (R. 689–690, 738, 747–748, 805–806, 818, 829.)

Overt Acts Nos. 13–16.—These overt acts relate to petitioner's acquisition of a Pontiac automobile for Herbert; they charged that petitioner accompanied Herbert on June 23 and 24 to the Warner Motor Sales Company to arrange for the purchase of an automobile for Herbert and that petitioner signed a financial statement, ordered the car, made an initial down payment on the purchase price, thereafter made a further payment, and completed arrangements for, and did purchase, an automobile for Herbert for the purpose of assisting him in carrying out his mission as an agent of the German Reich.

On the evening of Tuesday, June 23, after having supper with Mrs. Haupt and Herbert at a restaurant (*supra*, p. 15), petitioner drove Herbert to the Warner Motor Sales Company in Chicago (R. 699, 731, 786, 812). They entered the showroom, and petitioner told Farrell, a salesman, that he wanted to buy a good used late-model car (R. 453–454). Petitioner selected a 1941 model Pontiac automobile and inquired if he could purchase it on the installment plan. In response to the salesman's inquiry whether he had a car to trade in, petitioner said that he had a car, but he did not intend to trade it in; that the new car was for Herbert (R. 454–455). Petitioner paid a $10 deposit on the purchase price of $1,045 and said that he would come in the next day to make a further payment. Petitioner furnished financial references and signed an order for the car (R.

454–457). During the course of the negotiations, Vinson, the manager, came in and participated in the transaction (R. 457, 470–474). Both Farrell and Vinson testified as to these events.

On the following evening petitioner and Herbert again went to the Warner Motor Sales Company, and petitioner made an additional payment of $405 on the purchase price. Petitioner signed a note for the balance due and executed the usual finance contract (R. 461, 464). The bill of sale was made out to petitioner (Gov. Ex. No. 55). The car was delivered to Herbert, and he drove it away from the sales agency (R. 743). Farrell's testimony to this effect was corroborated by that of Vinson, who testified that he saw petitioner and Herbert come in and that he received the money petitioner paid and the note which petitioner signed (R. 476–477).

Petitioner's Knowledge of Herbert's Enemy Status and His Intent to Betray

To a large degree the Government relied upon petitioner's admissions and other declarations to show that he was aware of Herbert's role as an enemy agent and that he cooperated with Herbert to enable him to carry out his mission. The circumstances under which such statements were made and their nature may be summarized as follows:[8]

[8] The jury was instructed that this evidence should be considered only on the issue of treasonable intent (R. 1596–1597).

1. Petitioner was arraigned before a United States Commissioner on July 21, 1942. He was advised of the charge against him; he pleaded not guilty; and the matter was then continued before the Commissioner until August 5. (R. 655, 673.) Shortly before noon on August 5, petitioner was present in the "cell room" of the Marshal's office preparatory to further proceedings before the Commissioner at 2:00 p. m. (R. 655–656). Petitioner summoned the Marshal and said he wanted to talk to an F. B. I. agent (R. 656). In compliance with petitioner's request, two F. B. I. agents were summoned, and they talked with petitioner in a private room in the Marshal's office (R. 656–657, 663–664, 675). Petitioner volunteered some information, and the remainder was obtained in answer to questions posed by one of the F. B. I. agents (R. 670).

Petitioner told the agents, at the opening of the interview, that "he was very mad at Otto Wergin* and his wife, because he blamed the predicament of his son on them, and he wanted to testify in court against them" (R. 665, 675).

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* Wergin and his wife subsequently were jointly indicted for treason with petitioner and Mrs. Haupt and with Walter Froehling and his wife. They were all convicted, but the convictions were reversed upon appeal. See *United States* v. *Haupt*, 136 F. 2d 661 (C. C. A. 7). According to the Department's records, Wergin and Froehling subsequently pleaded guilty to misprision of treason, in violation of Section 3 of the Criminal Code (18 U. S. C. 3) and each was sentenced to imprisonment for five years.

Petitioner then said that on Saturday, June 20, 1942, he, Mrs. Haupt, and Herbert visited the Wergin home and that at that time Herbert told a complete story of his trip to Mexico; how he contacted the German Consul and obtained passage to Japan; how thereafter he ran the British blockade and landed in France and ultimately reached Germany. Petitioner said that Herbert told them that he had been in an "Intelligence School" and that "he had a huge sum of money to use in connection with that over here." Herbert also told of his return to the United States by submarine.[10] (R. 665–666, 675–676.)

Petitioner further told the F. B. I. agents that on Friday night, June 19, 1942, he and his wife were present at the Froehling[11] home where Herbert also related his experience after leaving Chicago (R. 667, 676). According to petitioner's statement to the agents, the Wergins and Haupts were present at the Froehling home on Sunday, June 21, 1942, and Herbert again discussed his trip to Japan and Germany, the intelligence school, and his return to this country by German submarine. They became apprehensive that other people in the building might overhear them, so the Haupts and Wergins left the Froehling home and went to the Haupt's apartment, where "again

[10] Petitioner said that at this time Wergin offered his services to Herbert "because he could use some of the money" Herbert had (R. 666–667).

[11] Herbert was Mrs. Froehling's nephew. See 136 F. 2d 661.

Herbie Haupt discussed his story." Petitioner advised the F. B. I. agents that it was because the Wergins encouraged Herbert to carry out his mission that he wanted to testify against them in court. (R. 667–668.)

Petitioner further told the agents that on the following Saturday night, June 27 (the day on which Herbert was arrested), the Froehlings, the Wergins, and petitioner and Mrs. Haupt were together in the Haupt apartment, and that "because Herbie had not shown up all day, they became rather fearful that something had happened to him, and at that time they all * * * decided that if anything had happened to Herbie, or if they were questioned, they would all tell the same story, that they knew nothing about his activities, except the fact that he had gone to Mexico." (R. 668, 677.)

2. The witnesses Majerczak (R. 882–969) and Hamby (R. 970–1011) were confined in the Cook County, Illinois, jail at the same time that petitioner was there (R. 884, 974–975).[12] Beginning on July 21, 1942, they talked with petitioner concerning his case and concerning their own cases (R. 886–891, 978). They testified that it was after petitioner learned from a newspaper that Herbert

[12] Both witnesses were in custody under state charges, and both have since been convicted and sentenced to life imprisonment in the state prison, where they are presently confined (R. 883, 970–971, 973).

had been executed that he began talking of him and his activities (R. 891–893, 978–979). In the course of the various conversations, petitioner said that he had been arrested because Herbert had given him United States money which Herbert obtained in Germany (R. 889, 901, 981–982); that Herbert had originally gone to Germany to join the German Army, with petitioner's approval (R. 893–894, 982–983); that about a year after Herbert left, petitioner was summoned to the Froehling's home and Herbert was waiting for him there (R. 894, 901, 983); that Herbert told him of his training in Germany and of his mission in this country (R. 895–897, 899, 983–985, 986); that he promised to assist Herbert as much as he could (R. 985); that Herbert gave him $1,000 with which to purchase an automobile for him, and that he purchased an automobile for Herbert (R. 901, 904, 905, 985); that he received other money from Herbert for safekeeping, which he hid under a rug (R. 902, 903, 985); that Herbert told him that he wanted to obtain a job with "the Optical Company," so that he could obtain information in respect of "some kind of a sight" (R. 990); that petitioner did not advise the Government authorities of Herbert's mission because "his son was his own flesh and blood and after all he was helping the fatherland" (R. 988); and that at the conclusion of the war, he intended to return to Germany (R. 907).

3. Gustave Zermer, a friend of petitioner's (R.

502), testified that he was present in the Haupt apartment on June 23, 1942 (see *supra*, p. 16), and that at that time petitioner told Zermer that Herbert would be "travelling around," and that he wanted to "use my address for mail" (R. 511). Petitioner suggested that Herbert's mail would be sent to Zermer's address and that Zermer should bring it to petitioner (R. 510–511, 519–521). Zermer agreed to the arrangement (R. 520–521). Zermer also testified that petitioner inquired whether Herbert could obtain living accommodations in the house where Zermer lived; that petitioner said that "he was afraid to have Herbert around the house" (R. 517).

4. Carl Eggert, a friend and employee of petitioner's (R. 591–594), testified that he met petitioner at a tavern on Sunday, June 28, 1942 (the day following Herbert's apprehension), and that petitioner paid a debt owed to him by giving him two fifty dollar bills (R. 599–601).[13] After they had been in the tavern a few minutes petitioner summoned Eggert into a back room and in a voice "just so I could understand it," petitioner said, "Carl, I have $900 of my own money. You can do me a favor and keep it for me. Then I am afraid now the F. B. I. comes in my home and takes it away." (R. 601.) Eggert agreed to keep the money for petitioner (R. 602). About three-quarters of an hour later petitioner ap-

[13] Burger testified that Herbert had $5,000 in fifty dollar bills in a money belt (see *supra*, p. 8).

peared at Eggert's home and gave him a closed envelope, which Eggert subsequently learned contained eighteen fifty dollar bills.

5. In addition to the evidence detailed above, the Government adduced the testimony of three witnesses which was concerned exclusively with statements made by petitioner commencing in 1936 which showed that he was more favorably disposed to Nazi Germany than he was to the United States. This testimony was also restricted to the issue of treasonable intent (R. 845, 874, 1024, 1595–1596).

Schroeder, a friend and fellow worker of petitioner's (R. 840–842), testified that in 1936 and 1937 petitioner told him that he liked Hitler very much (R. 846) and that "we needed a man like Hitler here to rule the country like it was built up over there * * *" (R. 847); that at a meeting of the German World War Veterans in 1939 he had opposed the sending of money to Germany because Hitler might use it for the purchase of armaments, and that petitioner came to him after the meeting and told him "that I am not a good German" and that "I should be ashamed of myself" (R. 856–857). Some time after Mrs. Haupt had visited Germany and after the German invasion of Poland and France, petitioner told Schroeder that he would kill Herbert himself before he would send him over to Germany to fight against Germany (R. 862).

Mrs. Fishman testified that in 1940 petitioner and Mrs. Haupt worked for her "as a couple" and that they and Herbert lived on her premises (R. 867–868); that petitioner told her that on weekends Herbert attended a Bund camp at Ludington, Michigan (R. 868–869); that petitioner said that "they would go up there and train; it was the proper thing for German people who were real Germans to send their children there and raise them like that" (R. 869–870); that in May 1940, petitioner said, "Hitler was a God-send to the German people" (R. 875); that "if we entered war against Germany we would have a revolution in this country like they had there after the last war; that we have German organizations back here that would take our armories over, our electrical companies, our telephone companies; that the same thing would happen to us as happened in Norway and France, that we would be taken from within by Fifth Column activities" (R. 875–876, 878); and that this would be done by the German organizations to which he belonged (R. 879).

Hans Poppe testified that he had known petitioner since 1936 (R. 1023–1025) and that they had worked together from 1937 to 1939 (R. 1026); that on several occasions in 1939, petitioner told him that he took Herbert and other boys to a Bund camp in Michigan (R. 1028); that petitioner said in 1939 that "if war would break out

with the United States and Germany, he would never permit his boy to join the American Army. He would send him to Mexico, and from there he would go to Germany and join the air force" (R. 1029); that petitioner said further that if this country should "take him in the Army, he would crawl over the enemy lines and tell them our position" (R. 1029); and that petitioner said in 1939 that "he had no feeling for the United States at all. His feelings were only for Germany, and he wished Hitler would come over here and drive all the Jews out, because the Jews are running this country" (R. 1030).

ARGUMENT

As we understand petitioner's position, he does not dispute the fact that Herbert was an enemy agent or that there is sufficient proof from which the jury could have found that petitioner knew of Herbert's enemy status and that he nevertheless assisted him in the performance of his mission. The trial judge was "convinced that Hans Max Haupt traitorously adhered to the enemies of the United States and gave them aid and comfort" and that "no other verdict than that rendered was reasonably possible" (I R. 112). The basic issues, as framed by petition for a writ of certiorari, relate to the sufficiency of the proof of the overt acts submitted to the jury and to asserted trial errors, particularly in the admission of evidence and in the instructions to the jury.

I

Twelve overt acts were submitted to the jury as possible acts of treason,[14] but the verdict in the case was a general one of guilty, without special findings as to the acts upon which it rests (I R. 97). Since, as in *Cramer* v. *United States*, 325 U. S. 1, 36, it is not possible to identify the particular overt act or acts upon which the jury relied in convicting petitioner, that to sustain the verdict the Government is obliged to support each of the twelve overt acts which were submitted to the jury. Contrary to the position of the dissenting judge below, this view bears no relation to the question whether the trial judge properly instructed the jury that it was to find petitioner guilty if it found that he committed any one of the overt acts submitted. The propriety of this instruction will be discussed *infra* at pp. 38–42. It is only because the jury's general verdict does not

[14] In respect of all of the overt acts, we think that the father-son relationship between petitioner and Herbert is immaterial either to the treasonable character of the acts or to the sufficiency of proof of these acts. It is material solely on the intent issue, *i. e.*, whether petitioner assisted Herbert only because he was his son or whether he assisted Herbert with knowledge that Herbert was an agent of the German Reich and with a desire to aid the enemy. The trial judge specifically instructed the jury that "if you are not satisfied beyond a reasonable doubt that the defendant intended to aid and comfort the enemies of the United States the defendant must be found not guilty" (R. 1579–1580; see also, R. 1578–1579, 1592–1594).

permit the ascertainment of the overt act or acts it relied upon that we would be required. under the rule just stated, to sustain all of the overt acts submitted to the jury.

1. *The Harboring and Sheltering Overt Acts.*—Petitioner does not deny that at the times specified in overt acts Nos. 12, 20, 21, 22, and 23 Herbert lived in petitioner's home, ate meals there and in general resumed the same relationship to the home as existed prior to Herbert's departure for Germany in 1941. And we do not understand petitioner seriously to contend that furnishing food and a place to live to an enemy agent knowing that he is such an agent is not capable of being an overt act of treason within the meaning of the Constitution and the *Cramer* decision.[15] Rather, petitioner's sole contention (Pet. 25–28) in respect of the harboring and sheltering acts, with one exception,[16] is that they were not proved by direct testimony of two witnesses. In his view

[15] In the *Cramer* decision the Court demonstrated the weakness of the proof relating to the overt acts in that case by pointing out that "Cramer furnished them no shelter, nothing that can be called sustenance or supplies," 325 U. S. at p. 37. In this case petitioner does not deny that he furnished both shelter and sustenance for Herbert, who petitioner knew was an enemy agent.

[16] Petitioner does not challenge the sufficiency of the proof to support overt act No. 17, which charged harboring on June 23, 1942, apparently because, in addition to the testimony of the F. B. I. agents, the witnesses Zermer and Saure testified that they were present in the Haupt apartment on that day and that Herbert was also there (see *supra*, p. 16).

the evidence which we have summarized, *supra*, pp. 13–18, in support of these overt acts is all circumstantial evidence which is inadequate to support the overt acts. We think the testimony concerning the acts which the witnesses directly observed demonstrates beyond any doubt that petitioner sheltered and harbored Herbert in his home.

It appeared at the trial that at all times involved in the overt acts in question, Herbert and the Haupt home were under surveillance by agents of the Federal Bureau of Investigation. By the direct testimony of two or more witnesses who lived in the building it was established that petitioner and his wife lived in the third floor front apartment at 2234 N. Fremont Street, Chicago, Illinois, and that the sole entrance to the apartment was through the front entrance to the building. These same witnesses testified that they lived in the only other two apartments which could be reached through the front door and that at no time did Herbert reside in their apartments. See *supra*, p. 13. By the direct testimony of two or more F. B. I. agents it was established that on each of the days in question Herbert on numerous occasions entered and left the building; that when he entered late in the evening the lights in the third floor front apartment were extinguished within a few minutes and that he did not leave

the building until the following day; that he always returned to the building at the close of the day; that on several occasions Herbert entered the building wearing described clothing and that when he thereafter left the building he was wearing other clothing; that on numerous specified occasions Herbert entered and left the building in company with both or one of his parents; and that on specified occasions Herbert accompanied petitioner and Mrs. Haupt from the Haupt home to the homes of their friends.

This testimony, always by at least two witnesses, concerning acts which they directly observed, in our view compels the conclusion, which petitioner does not deny, that Herbert at the times in question was living with petitioner in petitioner's apartment. The testimony does not reasonably permit any other conclusion. As we understand petitioner's view, the proof would have been adequate only if the witnesses had testified that they were present in the Haupt apartment and that they observed petitioner furnish food to Herbert and that they saw Herbert sleep in petitioner's bed; in other words, that acts of harboring and sheltering are for all practical purposes incapable of being satisfactorily proved in a treason case. For rarely, if ever, is such evidence available. In so far as probative value is concerned, we think the line between the evidence which the Government relies upon and the evidence which petitioner urges is necessary is an

imperceptible one. In both instances the same conclusion—that petitioner harbored and sheltered Herbert—necessarily follows from the evidence. We submit that the two witnesses' evidence which we have summarized in the statement, *supra*, pp. 13–18 amply sustains the allegations of the overt acts in question.[17]

2. *Overt Act No. 16; the purchase of an automobile.*—Petitioner does not seriously challenging the sufficiency of this act as an act of treason,[18] but he urges that it is supported by the direct testimony of only one witness. Overt act 16 charged that while at the Warner Motor Sales Company on June 24, 1942, petitioner made a payment in cash on the purchase price of an automobile for Herbert "and completed arrangements for the purchase of said automobile and did purchase said automobile" for Herbert with treasonable intent.

Petitioner agrees that the testimony of the salesman, Farrell (*supra*, p. 20), that petitioner

[17] Particularly in view of the testimony of both the Kluczyks and the Probsts (*supra*, p. 13) that petitioner regularly lived with Mrs. Haupt in the third floor front apartment, we are unable to agree with petitioner (Pet. 25) that the proof was inadequate to show petitioner's connection with the harboring and sheltering of Herbert.

[18] In the light of Burger's testimony (*supra*, p. 7) that Herbert was ordered by the German Government to procure an automobile for the saboteurs, there can be no serious question that petitioner's acts in procuring an automobile for Herbert, with knowledge of Herbert's mission, were not colorless acts.

and Herbert came to the salesroom on June 24 and that petitioner paid $405 on the purchase price, signed a note for the balance,[19] and took delivery of the automobile, is sufficient one witness testimony in support of the overt act. He challenges the sufficiency of the testimony of Vinson, the sales manager.

Vinson testified, concerning the events of June 24, 1942, that he saw petitioner and Herbert enter the sales agency at 7 or 7:30 p. m.; that the money and note which petitioner gave Farrell as payment on the purchase price were received by him at that time; that the note was signed by petitioner; and that he saw the invoice of the sale which was made on the evening of June 24, 1942 (R. 477–479).

Petitioner urges, somewhat hypercritically, we think, that Vinson did not testify that he saw petitioner pay the money which Farrell said he received from petitioner. But Vinson did testify that he received the money and note at that time, and he itemized the denominations of the currency which he received and that itemization corresponded with Farrell's testimony concerning

[19] Petitioner suggests (Pet. 29) that the note was signed on the previous day. The testimony of Farrell, however, was that on "that day," (June 24) (R. 460) the note was signed. Since the $405 was paid on June 24, it is likely that the note was signed at that time when the balance due was ascertainable, and not on the previous day, when the down payment had not yet been fully made. (See also, R. 477.)

the denominations of the currency which he received from petitioner (see R. 460 and 478). Coupled with Vinson's testimony that he saw petitioner in the sales agency at the time of the transaction, we think that Vinson was a direct witness to the automobile transaction charged in overt act No. 16.

Petitioner also urges (Pet. 30) that Farrell was the only direct witness to the fact that the car was purchased for Herbert, as was alleged in the overt act.[2] He has overlooked, however, the testimony of the witness Robe, an F. B. I. agent, that he observed petitioner and Herbert drive to the sales agency in petitioner's automobile (R. 743); that "I saw Herbert Haupt leave the Warner Motor Sales, driving the 1941 Pontiac coupe," which had just been purchased (R. 743–744; see also, R. 759); and that he observed Herbert driving to and from specified places in that automobile during the few days prior to his arrest (R. 743–748; see also, R. 759–762). This evidence that Herbert assumed dominion over the automobile immediately upon completion of the purchase and that he had the car until he was apprehended, adequately shows, together with Farrell's testimony, that the automobile was ac-

[2] In his defense, petitioner offered evidence that he purchased the automobile for Herbert to replace one that Herbert had left behind when he went to Germany (see R. 1114–1115).

quired for Herbert, or so at least the jury was entitled to find.[21]

3. *Overt acts Nos. 10 and 11; assisting Herbert in securing reemployment in the Simpson Optical Plant.*—In petitioner's view (Pet. 30–31), "no witness whatever offered any proof that the defendant assisted or attempted to assist Herbert Haupt to secure" employment at the Simpson plant.[22] We have summarized the evidence in support of these overt acts at pp. 10–12, *supra*. Briefly, the evidence shows that within a few days after Herbert returned to Chicago, petitioner drove him to the homes of two long-standing friends who were officials of the Simpson Optical Company, and that he was present while Herbert falsely explained his absence to those men and asked for a job at the Simpson plant.

It well may have been that Herbert would have been able to secure a job at the Simpson plant without the assistance of petitioner. But the fact is that he evidently thought that petitioner's ac-

[21] Our view assumes that different direct witnesses may be relied upon in support of parts of the overt act alleged; that so long as two witnesses testify as to all material parts of the overt act the constitutional requirement is satisfied.

[22] In the light of the evidence showing that Herbert's instructions from the German Government were "to procure information concerning the optical industry in Chicago, especially the Norden bombsight" (*supra*, p. 7), there can be no serious question that petitioner, who was familiar with Herbert's enemy status, was engaged in more than a colorless act when he accompanied Herbert to the homes of officials of the Simpson firm in quest of a job.

companying him to the homes of petitioner's friends would be helpful to him. For in the usual course of events, fathers who accompany their sons to the homes of prospective employers in search of a job do so in order to lend moral support and to add weight to the application. There is no evidence in the case that petitioner accompanied Herbert for any other purpose.

There can be no question that petitioner's presence at the homes of Grunau and Koch was helpful to Herbert. While Herbert falsely explained to petitioner's friends that he had been in Mexico digging gold, petitioner, who knew better, remained discreetly silent. Plainly, neither Grunau nor Koch would have considered giving Herbert a job if they had known he was an enemy agent who had a mission to perform at the Simpson plant. They would have known that if petitioner had not remained silent. Petitioner's silence at a time when he should have spoken up and told his friends that Herbert's story was untrue was, of course, strong confirmation of Herbert's explanation that he had been digging gold in Mexico. Assistance may very well consist of silence, where there is a duty to speak. Petitioner's presence in the homes of his friends and his silent support of Herbert were of real assistance to any enemy agent who was at that very moment engaged in fulfilling his mission for the German Government. Not only did it confirm Herbert's false story, but it also lent an air of respectability to a hostile

mission. Certainly it was not neutral conduct.

The evidence in this respect was testified to by never less than two direct witnesses, and was, we think, adequate to support overt acts Nos. 10 and 11.

4. *Instructions 50 and 51; the Government's position in the courts below.*—In instructing the jury concerning the overt acts which were submitted to it, the trial judge charged that "It is not necessary for the government to prove by two witnesses the performance of more than one of the submitted overt acts, providing, of course, the other elements of the alleged crime are proven beyond a reasonable doubt as heretofore defined in these instructions" (Instruction 51, R. 1591).[23] Petitioner adopts the position of Judge Major,

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[23] Instruction 50 (R. 1590–1591) was as follows:

"If you believe from the evidence beyond a reasonable doubt that Herbert Haupt, as alleged in the indictment, was an enemy agent, spy, or saboteur, and that he came into the United States on a mission for the German Reich and was acting as such agent, spy, or saboteur on such mission while here, and that the defendant, Hans Max Haupt, knowing that he was such agent, spy, or saboteur, unlawfully, feloniously, maliciously, intentionally, traitorously, and treasonably and with treasonable intent as hereinbefore defined did adhere to and give aid and comfort to the said Herbert Haupt as an enemy, all as alleged in the indictment, and that in furtherance of or in carrying out said alleged adherence and giving of aid and comfort, Hans Max Haupt with treasonable intent performed any one of the above alleged overt acts submitted to your consideration and that two direct witnesses have testified to such act, then you may find the defendant guilty. Otherwise, you must find the defendant not guilty."

dissenting in the court below, in respect of this instruction (Pet. 31–34), that the jury should have been instructed that to convict it must find that petitioner performed all twelve of the overt acts which were submitted to it. Judge Major thought that the Government has, in effect, recognized this to be true because, on the appeal, it undertook to sustain all twelve of the overt acts. Consistently with the position of the United States Attorney in the court below, we think Judge Major is mistaken and that the trial judge's instructions are correct.

As we understand Judge Major's opinions, he has failed to distinguish between the doctrine of *Stromberg* v. *California*, 283 U. S. 359, 368, and the elements of the offense of treason which the jury was required to find. In the *Stromberg* case, the Court held that where the case was submitted to the jury as permitting conviction under any one or all of three clauses of a statute, and where it was impossible to determine from the jury's general verdict upon which clause the conviction rested, the conviction could not be upheld unless all three clauses were found valid. The same principle was applied in the *Cramer* case (325 U. S. at 36). That doctrine, of course, rests upon the proposition that the appellate courts will not speculate as to which of several possible bases the jury relied upon in reaching its verdict. Accordingly, when the verdict is a general one, the Government must under that

doctrine sustain each of the alternative bases in order to sustain the conviction on appeal. Nothing in the doctrine of the *Stromberg* case relates to the constituent elements of any particular offense or to the propriety of instructions to a jury. It is in this respect that we think Judge Major's position is unsupportable.

Judge Major points out that the Government's position in the trial court was that, in addition to the other elements of the offense, the jury was required to find that petitioner committed at least one overt act and that it was witnessed by two persons and that the trial judge so instructed the jury. Yet on appeal, he argues, the Government conceded that to sustain the conviction, it was obliged to sustain all twelve of the overt acts submitted to the jury. Accordingly, the dissenting opinion concludes (152 F. 2d at 807) that "the Government tried the case on one theory and presented it to this court on another" and that the instructions to the jury were erroneous.

It was the Government's position in the trial court and in the circuit court of appeals, and it is our position in this Court, that the Constitution requires that only one overt act need be established by two witnesses and that the trial judge therefore properly instructed the jury that on this phase of the case it was required to find that petitioner committed any one of the twelve overt acts submitted to the jury before it could convict

petitioner. It is true that in the circuit court of appeals the United States Attorney conceded that unless all twelve overt acts are supported by the requisite testimony, the conviction should be reversed. He took this position, however, only because there was no basis for ascertaining from the general verdict of guilty which overt act or acts the jury relied upon in convicting petitioner. We perceive no inconsistency between his position in the trial court and his position on the appeal. If the jury had made special findings as to each overt act, his concession would have been unnecessary. The prosecution would then be required to sustain only one of the overt acts upon which the jury relied, as revealed by its special findings.

Judge Major's view that the instructions to the jury should have required the jury to find for the Government on every overt act which was submitted to it rests upon his interpretation of footnote 45 of the *Cramer* opinion (325 U. S. at 36); he relies particularly upon the language that "the verdict must be set aside if any of the separable acts submitted was insufficient." (See 152 F. 2d at 805.) But the language which precedes the quoted words makes plain the fact that in no sense was the propriety of the instructions to the jury involved. Mr. Justice Jackson, speaking for the Court, explained that because the jury had not made special findings, it was impossible to identify the overt act upon which Cramer was con-

victed, and it was only for this reason that the Court said that the verdict must be set aside if any of the overt acts could not be supported. Significantly, the trial court in the *Cramer* case also instructed the jury that it need only find one overt act to convict (See R. 441–442, No. 13, 1944 Term). Nothing in the *Cramer* decision suggests that this instruction was erroneous.

Judge Major, in effect, concedes that if, in addition to the other elements of the offense, only one overt act had been submitted to the jury as a possible act of treason, all of the elements of the treason offense would have been properly submitted and a conviction could be sustained (152 F. 2d at 806). We do not understand how the elements of the offense of treason, which the jury was required to find to convict, are changed by the fact that more than one overt act was submitted to the jury as a possible overt act of treason. Accordingly, we submit that the trial judge's instructions on this phase of the case are unassailable.[24]

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[24] Petitioner's reliance (Pet. 33–34) on *Bollenbach* v. *United States*, No. 41, decided January 28, 1946, is misplaced. There is no equivocal jury instruction in this case, and the circuit court of appeals has not affirmed a conviction because guilt was evident from the record, even though the defendant did not have the kind of trial to which he was entitled. In testing the validity of the overt acts and the proof in support of them, the circuit court of appeals performed precisely the same function that this Court performed in the *Cramer* case.

II

Petitioner also contends (Pet. 34–41) that he was convicted on the basis of incompetent evidence. He challenges (1) the use on the issue of intent of his pre-war statements showing an intense devotion to Hitler and Nazi Germany; (2) the use on the issue of intent of one witness testimony concerning overt acts which were not submitted to the jury; (3) the use on the issue of intent of petitioner's extra-judicial admissions; and (4) the use of Burger's testimony and exhibits to show that Herbert was an enemy-agent.

1. Notwithstanding the fact that in his defense petitioner introduced testimony of a pre-war statement with a view to showing the absence of any pre-disposition to disloyalty to the United States (see R. 1103–1106), petitioner urges (Pet. 35) that prejudicial error resulted from the admission in evidence of the testimony of four witnesses concerning his pre-war statements, limited solely to the issue of treasonable intent. When it is recognized that the Government was obliged to prove petitioner's adherence to the enemy and that the statements were received with proper cautionary instructions to the jury, we think petitioner's argument must fail.

The evidence of petitioner's pre-war statements is summarized in the Statement, *supra*, pp. 26–28. It involves a few statements in 1936 and 1937 and more in the years immediately preceding the war.

The statements were not of the refusal-to-buy-war-bonds character, as in the Cramer case. They were statements of adulation for Hitler and Nazi Germany; they were statements of petitioner's proposed conduct in the event the United States went to war against Germany; and they were statements of what the German organizations to which he belonged would do along the lines of fifth column activity in the event of a war between the United States and Germany. At the time the testimony was admitted the trial judge instructed the jury that the statements were restricted solely to the issue of intent (R. 845, 874, 1024) and he so instructed the jury at the close of the case.[25]

[25] The trial judge's careful instructions to the jury in this respect were as follows (R. 1595–1596):

"58. There has been some testimony of certain statements purportedly made by the defendant prior to our declaration of war with Germany. Such statements of the defendant, if you believe they were made, are not grounds for charging the defendant with treason. The defendant, as well as others, had the right to his opinions and he had a right to express his opinions and to do anything lawful in keeping with those opinions and sympathies, but those statements, if you believe any were made, may be borne in mind by you in determining what his intent may have been after this country was at war with Germany, in committing, if you find beyond a reasonable doubt that he did so commit, any of the various overt acts charged in the indictment and submitted to your consideration by the court in these instructions.

"59. No law of the United States is violated when a person in a general discussion expresses favorable or adverse opin-

We agree with petitioner (Pet. 35) that none of this testimony was relevant to the establishment of the overt acts alleged in the indictment. Indeed, as we have shown, it was received in evidence solely on the issue of intent. On that issue, the statements were, we think, appropriate background evidence which reflected the setting in which petitioner acted in June 1942. It was important evidence in showing that petitioner was doing more than helping out his son; that he assisted Herbert, as petitioner stated at a later time, because "after all he was helping the fatherland" (R. 988). The short answer to petitioner's claim that the evidence of his statements was of a prejudicial nature is that all evidence of treasonable intent or a pre-disposition to commit treason is prejudicial to the defendant; otherwise it would not be offered. The Federal courts have long recognized the admissibility of such evidence in

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ions as to members of any race, color, or creed, or regarding any nationality.

"60. The court has permitted the Government to introduce into evidence in this case certain alleged statements or utterances purportedly made by the defendant prior to the events forming the basis of the indictment in this case. Such statements or utterances, if you believe they were made by the defendant, do not constitute evidence of the commission either of the treason alleged or of the commission of any alleged overt act, but may be considered by you, if you credit them, solely in determining the intent or state of mind of the defendant in performing, if you find he did perform, any alleged overt act or acts of treason charged in the indictment to have been committed by him, and submitted to your consideration in these instructions."

prosecutions where the defendant's state of mind is of crucial significance.[26] For, while the statements were not legally objectionable when made, they reflect the speaker's motive and purpose and are thus of probative value in judging his later acts.[27]

2. Of the twenty-nine overt acts charged in the indictment, seventeen were not submitted to the

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[26] *Williamson* v. *United States*, 207 U. S. 425; *Allis* v. *United States*, 155 U. S. 117, 119; *Wood* v. *United States*, 16 Pet. 342, 360–361; *Vierick* v. *United States*, 130 F. 2d 945, 959–960 (App. D. C.), reversed on other grounds, 318 U. S. 236; *United States* v. *Pelley*, 132 F. 2d 170, 180–181 (C. C. A. 7), certiorari denied, 318 U. S. 764; *Schoborg* v. *United States*, 264 Fed. 1, 7 (C. C. A. 6), certiorari denied, 253 U. S. 494; *Howenstine* v. *United States*, 263 Fed. 1, 5–6 (C. C. A. 9); *Steyzel* v. *United States*, 261 Fed. 161, 162 (C. C. A. 8); *Shidler* v. *United States*, 257 Fed. 620, 623 (C. C. A. 9); *Herman* v. *United States*, 257 Fed. 601, 603–604 (C. C. A. 9), certiorari denied, 251 U. S. 558; *Coldwell* v. *United States*, 256 Fed. 805, 811–812 (C. C. A. 1), certiorari denied, 250 U. S. 661; *Kirchner* v. *United States*, 255 Fed. 301, 304–305 (C. C. A. 4), certiorari dismissed, 250 U. S. 678.

[27] Petitioner's argument (Pet. 35–36) that this evidence is also assailable on the ground that two witnesses did not testify to it is fully answered by the *Cramer* opinion (325 U. S. at 31) as follows:

"* * * What is designed in the mind of an accused never is susceptible of proof by direct testimony. If we were to hold that the disloyal and treacherous intention must be proved by the direct testimony of two witnesses, it would be to hold that it is never provable. It seems obvious that adherence to the enemy, in the sense of a disloyal state of mind, cannot be, and is not required to be, proved by deposition of two witnesses."

jury because the Government was not satisfied that it had established those acts by the testimony of two witnesses. In instructing the jury concerning the withdrawn overt acts, the trial judge told the jury that even if the jury believed that the withdrawn acts had been committed by petitioner, "they may not in themselves be made the basis of a conviction under the Constitution," and that "if you believe that the defendant did actually perform any of these other alleged overt acts which were not proven to the degree required by the Constitution, you may consider any such act in determining the question of the intent with which the defendant may have performed" any of the overt acts submitted to the jury (R. 1589–1590).

Petitioner urges (Pet. 36–37), that it was error to permit the jury to consider evidence of withdrawn overt acts even though such evidence was restricted to the issue of intent. He predicates his argument on the statement in the *Cramer* opinion with reference to the withdrawn overt acts (325 U. S. at 39) that, "we cannot sustain a conviction for the acts submitted on the theory that, even if insufficient, some unsubmitted ones may be resorted to as proof of treason." When this language is read in its context, it is evident that the Court was discussing the sufficiency of the overt acts and it was pointing out how much stronger the unsubmitted overt acts were than the

three that were submitted to the jury. The discussion was not concerned with the nature of proof which was admissible on the issue of intent once the overt act was established.

The question which petitioner raises is whether, assuming the overt act is properly established, the jury may be permitted to consider one witness evidence of other unsubmitted overt acts on the issue of intent. The answer is found in the words of the *Cramer* decision which were directed to the question of proving the elements of the crime other than the over act (325 U. S. at 33):

> It would be no contribution to certainty of judgment, which is the object of the provision, to construe it to deprive a trial court of the aid of testimony under the ordinary sanctions of verity, provided, of course, resort is not had to evidence of less than the constitutional standard to supply deficiencies in the constitutional measure of proof of overt acts.

If the withdrawn overt acts had not been charged in the indictment, there would be no question that evidence concerning them would be probative on the issue of adherence to the enemy. We know of no reason in law or experience why, once the overt act is properly established, one witness evidence of other acts may not be considered by the jury solely on the issue of intent, even though those acts may have been charged in the indict-

ment as overt acts and were not submitted to the jury as possible overt acts of treason.[28]

3. Petitioner's sole contention (Pet. 37–38) concerning the evidence of his extra-judicial admissions (*supra*, pp. 21–25) is that the treason clause of the Constitution only permits the use of a confession made in open court. We think he misconceives the meaning of the constitutional provision. The Constitution permits the conviction of a person who confesses his treason in open court and in all other cases it requires that there must be two witnesses to an overt act of treason. But there is nothing in the Constitution which forecloses the Government from establishing the defendant's adherence to the enemy by his extra-judicial admissions, provided, of course, that an overt act is also established by the testimony of two witnesses. It is only when there is no proof of an overt act that a conviction must rest upon a confession in open court. That is not this case.

[28] Petitioner's argument (Pet. 37) that it was improper to permit the Government to cross-examine the witness Zermer as a hostile witness is totally without merit. As we have shown (*supra*, p. 16), Zermer was a friend of petitioner's who had agreed to receive Herbert's mail for him. In the previous trial of petitioner, Zermer gave highly incriminating testimony concerning petitioner's efforts to arrange for Herbert's lodging. Yet at the present trial he professed to have no such information. In these circumstances we think there is no basis for saying that the trial judge abused his discretion in permitting the Government to cross-examine Zermer concerning his previous testimony. (See R. 513–518.)

The *Cramer* decision (325 U. S. at 32) expressly recognizes that all common-law evidence is admissible on the issue of intent. See also Foster's Reports, *Crown Cases*, p. 241.

4. Petitioner is mistaken in his contention (Pet. 38–41) that Burger's testimony and the exhibits introduced through him and various FBI agents were improperly relied upon to show petitioner's treasonable intent. His testimony and the exhibits were admitted in evidence solely upon the issue of Herbert's enemy status and the jury was expressly instructed that this evidence was specifically limited to that issue (R. 1597). The propriety of adducing such evidence to show that Herbert was an enemy agent was recognized by petitioner's counsel at the opening of the trial (R. 44–45; see R. 114, 116, 117, 119, 231) and the evidence was received for this limited purpose without objection by petitioner. Since the evidence was properly confined to that issue there is no real basis for petitioner's present complaint.

III

Petitioner assigns numerous other grounds of alleged error in the trial court, which we think are untenable and do not require extended comment.[29]

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[29] For purposes of brevity, we shall not discuss petitioner's contentions concerning the validity of the indictment (Pet. 41–45), the admissibility in evidence of the Illinois statute on the harboring a member of a family (Pet. 45–46), the

1. Petitioner suggests (Pet. 47) that the government attorneys in their arguments to the jury appealed to passion, prejudice and war hysteria and in support of this contention he refers to his brief in the court below, where excerpts of the arguments are torn from their contexts [30] and are relied upon as being improper. Although the argument was advanced in the court below, none of the judges deemed it sufficiently meritorious even to require discussion. We think that when the arguments of government counsel are read as a whole (R. 1378–1446, 1533–1560), as they must be, they are not assailable. It is evident that counsel argued their case vigorously and with all the persuasiveness at their command. They replied to the contentions developed by petitioner in the course of the trial and to the arguments of his counsel. They represented the Government well, but at the same time, they did not strike any foul blows at the petitioner.

2. With the express approval of petitioner's counsel, the trial judge permitted the jury to take a copy of the indictment, which the jury was told was not evidence (R. 1569–1570), and a copy of

remaining parts of the charge to the jury (Pet. 47–49), and the duration of the jury's deliberations. Each of these questions is, we think, properly answered by the opinion of the court below.

[30] For example, at pages 226 of petitioner's brief in the court below, two quotations from the argument are printed together, while in fact, the two paragraphs are separated by eight pages of argument.

the charge to the jury to the jury room (R. 1603). Petitioner now urges (Pet. 49–50) that this was error. It is settled, however, that such matters are within the discretion of the trial judge and where, as here, there are involved twelve overt acts which the jury was required to pass upon and a lengthy charge, we think there was no abuse of that discretion. *Little* v. *United States*, 78 F. 2d 861, 864 (C. C. A. 10); *Capriola* v. *United States*, 61 F. 2d 5, 7 (C. C. A. 7); *Murray* v. *United States*, 130 F. 2d 442, 444 (App. D. C.); *Garst* v. *United States*, 180 Fed. 339, 345 (C. C. A. 4). Particularly is this so in this case inasmuch as petitioner expressly acquiesced in the trial judge's action. Cf. *Johnson* v. *United States*, 318 U. S. 189, 199–201.

3. The morning after the jury retired, they advised the court, through their foreman, that they desired that the testimony of defense witness Short and government witnesses Hirsch and Robe be read to them[31] (R. 1609). The trial judge summoned counsel on both sides before the court and a discussion was had as to the propriety of

[31] Short had testified that he was a lawyer; that he, accompanied by petitioner's present counsel, interviewed petitioner at the Cook County Jail on July 29, 1942; and that from that interview he concluded that petitioner was insane. (R. 1130–1132, 1136–1137.) The Department's records reveal that a sanity hearing was held before petitioner was tried on the treason charge and that he was found sane. Hirsch and Robe are F. B. I. agents who had testified concerning admissions petitioner made to them on August 5, 1942 (see *supra*, pp. 21–23).

granting the jury's request. Petitioner's counsel opposed granting the request and government counsel expressed concern over granting the request unless petitioner's counsel concurred in the action (R. 1609–1610). The trial judge finally concluded that fairness to the jury required that its request be granted and that a cautionary instruction would adequately protect both sides (R. 1610–1613). Accordingly, the jury returned to the courtroom, the testimony of the three witnesses was read to the jury, and the court then instructed the jury as follows (R. 1650–1650–A):

> Ladies and gentlemen, pursuant to the written request of the jury through your foreman there has been read to you a transcript of the testimony of the witnesses, Short, Hirsch and Robe. The jury are cautioned to bear in mind that they have now heard the testimony of these three witnesses twice while they have heard the testimony of the other witnesses only once, and that they shall not allow the fact that they have heard the testimony of these three witnesses twice to cause them to give undue importance or weight to it. The jury should, on the other hand, consider the testimony of these three witnesses, and that of each of them, as though they had heard it but once and consider it together with all of the other evidence in the case.

Petitioner points to no decisions which disapprove of the practice of repeating testimony to a jury at its request. We think it is a matter for

the discretion of the trial judge. In this case, considering the length and complexity of the trial, the fact that the jury's request related to testimony on both sides of the case, and the cautionary instruction which was given, we perceive no abuse of discretion in doing what the trial judge did.

4. Petitioner's contention (Pet. 54–55) that the verdict of the jury was the result of passion, prejudice, and war hysteria is totally unfounded. That the jury was not influenced by these factors is evident from the record. The jury's verdict was predicated on extensive deliberations. When it was reached the jury indulged in the unusual practice, which reflects its mental attitude toward petitioner, of writing a letter to the trial judge, which all the jurors signed. That letter (I R. 99) states that the jurors performed their duty in accordance with the instructions of the court and that the jurors did not predicate their verdict on their emotions. The letter further recites that having performed their duty, the jurors now felt free to speak from their hearts, and requested the trial judge to be "merciful" to petitioner. The trial judge was so impressed with the letter that he did not sentence petitioner to death as he would otherwise have done (see I R. 112–113). Apart from the fact that the evidence required the result which the jury reached, it certainly cannot reasonably be said that a jury which voluntarily pleaded for mercy for petitioner based its verdict on such extraneous matters as war hysteria, passion, or prejudice.

CONCLUSION

Petitioner has been tried twice for treason and two juries have found him guilty of that offense. Petitioner had a fair trial and we think the trial judge was correct in stating that on the evidence no other verdict was reasonably possible. The case does not require further review by this Court. We therefore respectfully submit that the petition for a writ of certiorari should be denied.

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No. 49

In the Supreme Court of the United States

OCTOBER TERM, 1946

HANS MAX HAUPT, PETITIONER

v.

THE UNITED STATES OF AMERICA

BRIEF FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 49

HANS MAX HAUPT, PETITIONER

v.

THE UNITED STATES OF AMERICA

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The majority and dissenting opinions in the circuit court of appeals (R. 881–930) and the dissenting opinion of Judge Major on denial of the petition for rehearing (R. 951–954) are reported at 152 F. 2d 771.

JURISDICTION

The judgment of the circuit court of appeals was entered December 20, 1945 (R. 930), and a petition for rehearing (R. 930–944) was denied January 24, 1946 (R. 951). The petition for a writ of certiorari was filed February 28, 1946, and granted on May 27, 1946 (R. 957–958). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended

by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTIONS PRESENTED

1. Whether the overt acts submitted to the jury were legally sufficient acts of aid and comfort within the rule of *Cramer* v. *United States*, 325 U. S. 1.

2. Whether the overt acts submitted to the jury were each supported by the testimony of two witnesses as required by the Constitution.

3. Whether the trial judge erred in instructing the jury that petitioner could be convicted if they found that, with intent to betray, he had committed any one of the overt acts submitted for their consideration and that such act had been established by the testimony of two witnesses.

4. Whether reversal of the judgment must result from a finding of insufficiency as to any one overt act.

5. Whether the trial court properly admitted on the issue of intent evidence of (a) petitioner's pre-war statements, (b) petitioner's extra-judicial admissions, (c) one-witness testimony of overt acts withdrawn from the jury's consideration.

6. Whether the trial judge properly admitted the testimony of a convicted saboteur on the nature of the hostile mission as bearing on the enemy status of Herbert Haupt.

7. Whether the trial judge abused his discretion in permitting the Government to cross-examine a hostile witness.

8. Whether government counsel were guilty of misconduct in their closing arguments.

9. Whether the trial judge erred in permitting the jury to take a copy of the indictment and of his instructions to the jury room, and in acceding to the jury's request for the rereading of the testimony of one defense and two government witnesses.

10. Whether the jury's verdict was the result of passion and prejudice.

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

Constitution, Art. III, sec. 3:

> Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.
>
> * * * * *

Section 1 of the Criminal Code, 18 U. S. C. 1:

> Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason.

STATEMENT

Petitioner was indicted (R. 1–9) in the District Court of the United States for the Northern District of Illinois, for treason.[1] The indictment alleged that from June 17, 1942, to July 17, 1942, petitioner, a person owing allegiance to the United States, unlawfully adhered to the enemies of the United States, the Government of the German Reich, with which the United States was at war. It was alleged that on June 17, 1942, Herbert Haupt, an agent of the German Reich, came to the United States and served as a secret agent, saboteur, and spy, and that petitioner, knowing of Herbert's mission, adhered to the enemy and gave it aid and comfort by maintaining and harboring Herbert; by meeting with and assisting Herbert in matters connected with Herbert's service to Germany; in his countenancing that service; in carrying out requests and instructions of Herbert in connection with that service; in purchasing an automobile for Herbert; in attempting to procure employment for Herbert; in furnishing false information regarding the identity and mission of Herbert; and in receiv-

[1] Petitioner previously had been convicted of treason and sentenced to death under another indictment which was predicated on the same acts, see *United States* v. *Haupt*, 47 F. Supp. 832, 836 (N. D. Ill.), but the conviction was reversed by the Circuit Court of Appeals for the Seventh Circuit, principally because of the applicability of the *McNabb* doctrine, 318 U. S. 332, to the case. *United States* v. *Haupt*, 136 F. 2d 661.

ing, safeguarding, and concealing property and funds of Herbert. Twenty-nine overt acts were alleged to have been committed by petitioner with the intention of adhering to the enemy and giving it aid and comfort (R. 3–9), but only twelve were submitted to the jury (see *infra*, pp. 10–21).

Petitioner was tried before a jury and was found guilty (R. 45); he was sentenced to imprisonment for the remainder of his life and to pay a fine of $10,000 (R. 52–53).[2] Upon appeal to the Circuit Court of Appeals for the Seventh Circuit, the judgment was affirmed, one judge dissenting (R. 930, 951).

Petitioner is the father of Herbert Haupt, one of the eight saboteurs convicted by a military tribunal, and who was thereafter executed. See *Ex Parte Quirin*, 317 U. S. 1. Petitioner was born in Germany in 1894;[3] he married there; and his son Herbert was born of that marriage in Germany

[2] In a memorandum opinion the trial judge stated that on the evidence adduced at the trial petitioner deserved a sentence of death, but that the life sentence was imposed in deference to a letter from the jury urging the court to be merciful to petitioner (R. 53–55; see also R. 45 and R. 847).

[3] There was no dispute at the trial that petitioner is a naturalized citizen; his naturalization certificate was received in evidence as Government Exhibit 65 (R. 439). But as a resident of the United States, he owed a temporary allegiance to this country, violation of which would have been treason, regardless of his citizenship. See *Carlisle* v. *United States*, 16 Wall. 147; *Radich* v. *Hutchins*, 95 U. S. 210; *De Jager* v. *Attorney-General of Natal*, [1907] A. C. 326 (Privy Council); *Joyce* v. *Director of Public Prosecutions*, [1946] A. C. 347 (House of Lords).

in 1919. He came to this country in 1923, his wife and son followed two years later, and thereafter they lived in or about Chicago, Illinois. (See R. 54, 87–88, 103, 882.) In the spring of 1939 the son, Herbert, obtained a job with the Simpson Optical Company in Chicago, which is engaged in the manufacture of all kinds of lenses for instruments, including parts for the Norden bombsight (R. 247–248). The evidence, which is treated in somewhat more detail below, shows that in the spring of 1941, Herbert left his home and job and went to Mexico (R. 222, 226, 234, 243, 645–651), that with the aid of the German consul in Mexico (R. 651) he went to Japan (R. 218–219, 242), and from there to Germany (R. 139, 412–41[illegible]525, 570–571), and that there he entered the employ of the German Government and was trained for sabotage work in this country (R. 107–173).

A. HERBERT'S ENEMY STATUS

The acts of treason charged against petitioner are predicated on the proposition, which was undisputed at the trial (see R. 101–102), that Herbert was an enemy agent. The Government established the enemy character of Herbert principally through the testimony of Ernest Peter Burger, one of Herbert's fellow saboteurs. Burger detailed (R. 107–173) the intensive training in sabotage that Herbert and his seven co-saboteurs re-

ceived in Germany. Essentially, his testimony revealed the facts which are set forth in this Court's opinion in *Ex parte Quirin, supra,* 317 U. S. at 20–22, and for purposes of brevity we shall not restate them here. Suffice it to say that before the eight saboteurs left Germany, they were instructed concerning their activities in this country. The general strategy was that each saboteur, after he had illicitly landed in the United States, should devote three or four months to establishing his identity. Each was to establish himself in a community and engage in the same work that he had previously been doing. (See R. 116–117, 134–135.)

Herbert's specific instructions were as follows:

1. To use his own name only in a vicinity or among people where he was known (R. 115);

2. Upon landing in the United States to proceed directly to Chicago (R. 115);

3. To procure an automobile for the use of his fellow saboteurs (R. 115); "the purpose for purchasing an automobile was to, first, remove our explosives from the place where they were caged, or hidden or buried, back to a place which in the meantime would be prepared. The second purpose for a car was to give us range for our operations" (R. 116);

4. To secure employment with the Simpson Optical Co. (R. 120, 159, 160).

5. "To procure information and details concerning the optical industry in Chicago, especially the Norden bombsight, and to furnish us [the saboteurs] information * * * in order to equip us to carry out our assignments" (R. 115). "There was only one particular name mentioned, and that was the name of the Simpson Optical Company in Chicago connected with the Norden bombsight" (R. 120).

6. To procure information "of the incendiary layout" and about "vital machines and parts" in the Simpson Optical Co., "in order to equip us to attack the different particular parts, * * * all important bottlenecks in this plant" (R. 120).

7. To register under the Selective Training and Service Act (R. 115);

8. "To contact trustworthy political people and to deposit a certain amount of money with them as a contingent fund for our groups in case of emergency" (R. 115);

Before leaving Germany the saboteurs were divided into two groups, each one taking one-half of the United States for its operations. The witness Burger was in group 1 and Herbert was in group 2 (R. 117–118). The assignment sheet of group 1 stated that that group would receive its information concerning optical industries from Herbert, even though he was a member of group 2 (R. 118), because "he happened to be the only

one who * * * was familiar with optical matters" (R. 119–120).

The saboteur group was fully equipped with necessary clothing and materials and with large sums of United States currency, and they came to this country by submarine (R. 122–134, 144–152). Herbert picked all the yellow-backed gold certificates out of the money, because, as he assured his associates, such bills were not valid in the United States (R. 171). The evidence traced the landing of Herbert's group in Florida, the caching of their sabotage equipment on the beach, their temporary stay in Florida, and Herbert's ultimate arrival in Chicago (R. 173–185, 199–210, 212–213). Herbert carried $5,000 in $50 bills in a money belt and $400 in bills of smaller denominations, and also a zipper bag in which $10,000 was concealed (R. 124–125, 139–140).

Upon his arrival in Chicago, Herbert went to the Froehling's (R. 525, 571)—his aunt and uncle—then immediately contacted his parents, and lived with his parents until he was arrested. (See *infra*, pp. 13–20.) The overt acts charged against petitioner relate to the events which transpired from the time Herbert arrived in Chicago until he was taken into custody by the F. B. I. a week later.

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B. THE OVERT ACTS SUBMITTED TO THE JURY[4]

The trial court submitted twelve of the twenty-nine overt acts alleged in the indictment (R. 44) to the jury as possible overt acts of treason within the meaning of the Constitution—"as overt acts which may or can be proven by the testimony of two witnesses" (R. 666). Generally stated, two of the overt acts (Nos. 10 and 11, R. 5) charged that petitioner assisted Herbert in obtaining employment so that he might conceal his identity and mission; six (Nos. 12, 17, 20–23, R. 5, 6–7) charged that petitioner harbored Herbert for six successive days from June 22, 1942, to June 27, 1942, inclusive; four (Nos. 13–16, R. 5–6) charged that petitioner accompanied and assisted Herbert in the purchase of an automobile. The evidence in support of these overt acts may be summarized as follows:

(1) ASSISTANCE TO HERBERT IN OBTAINING EMPLOYMENT

Overt Act No. 10.—Overt Act No. 10 charged that on June 22, 1942, petitioner accompanied Herbert to the home of one Andreas Conrad Grunau, for the purpose of assisting Herbert in securing employment, so that he might conceal his identity and mission and so that he might pursue his mission.

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[4] See *infra*, pp. 22–30, for a summary of evidence, other than that revealed by the overt acts submitted to the Jury, showing petitioner's treasonable intent.

Grunau testified that he was the superintendent of the Simpson Optical Manufacturing Company, which was engaged exclusively in war production during the war and which produced parts for the Norden bombsight (R. 247–248). He belonged with petitioner to a German singing society and he had known petitioner since 1937 (R. 248, 250). Herbert had worked for the Simpson firm from 1939 to 1941 (R. 248–249).

Grunau said that on the evening of June 22, 1942, he came home at about 8 o'clock and found Herbert and his parents waiting for him (R. 249). In response to his inquiry, Herbert, in the presence of petitioner, told Grunau that he had been in Mexico digging gold (R. 249). Herbert assured Grunau that he had registered under the Selective Training and Service Act (R. 249–250), and shortly thereafter, in the presence of his parents, Herbert asked Grunau for a job with the Simpson Optical Co. (R. 250). He was informed that he should come to the plant and fill out an application (R. 250). Herbert inquired whether he could obtain a draft deferment, and he was told that the matter would be handled by the "front office" (R. 250).

Mrs. Grunau testified (R. 253–257) that the Haupts came to her home by automobile sometime after 7 o'clock in the evening. Herbert told her that he had come from Mexico and that he wanted to get his old job back. She corroborated her

husband's testimony that when he came home the Haupts were waiting for him and that in the presence of his parents Herbert explained to Mr. Grunau that he had been in Mexico.

Edith McGowan, a daughter of the Grunaus, testified that she was in her parents' home when the Haupts came there and that petitioner was driving the automobile in which the Haupts came to their home (R. 257–260).[5]

Overt Act No. 11.—This overt act is of the same nature as the previous one, and names one Heinrich Koch as the person whom the Haupts visited in quest of a job for Herbert.

Koch testified (R. 260–263, 286–288) that he was a foreman for the Simpson Optical Company; that he knew petitioner; and that Herbert had worked in his department from 1939 to 1941. At 9:30 p. m. on June 22, 1942, petitioner, Herbert, and Mrs. Haupt came to his home. Herbert explained to Koch that he had been in Mexico and that he wanted to get back his job at the Simpson plant; that he wanted to work in defense work. When Koch questioned Herbert concerning his draft age, petitioner said, "I sent him all this morning to the Draft Board and to the F. B. I."

[5] The testimony of the Grunaus was corroborated by the testimony of several F. B. I. agents who had Herbert under surveillance and who observed petitioner, as well as Herbert and Mrs. Haupt, leave his home and drive to the Grunau residence (R. 432–433, 440–441, 447–449, 453–454, 462–463, 468–469).

(R. 287). When Koch questioned Herbert about where he had been, saying that he thought he had been in Japan, Herbert said, in the presence of petitioner, "we was only a little bit sailing" (R. 288). Herbert also spoke to Koch about a draft deferment (R. 288). Mrs. Koch testified similarly that petitioner, Herbert, and Mrs. Haupt came to the Koch home "to see my husband on business" and that the business concerned a job for Herbert (R. 289–290).

The F. B. I. agents, who were trailing Herbert, testified that they observed the Haupts leave the Grunau residence and go by automobile, with petitioner driving, to the Koch residence, and that at the conclusion of the visit to the Koch home, petitioner drove Herbert and Mrs. Haupt to their home, and he then drove away (R. 433, 441–442, 463–464, 468–469).

(ii) HARBORING AND SHELTERING HERBERT

Overt Acts Nos. 12, 17, 20–23.—Each of these overt acts charges in substantially the same terms that on a specified date petitioner "harbored and sheltered the said enemy Herbert Haupt at the home of Hans Max Haupt and Erna Haupt, 2234 N. Fremont St., Chicago, Illinois, well knowing that the said enemy was an agent of the Government of the German Reich in the United States to commit sabotage, act as a spy, and perform other services for said Government as aforesaid, all with the intent and for the purpose of assist-

ing said enemy Herbert Haupt in carrying out his mission as an agent of the Government of the German Reich as aforesaid."

Petitioner and his wife lived in a front apartment on the third floor of a building at 2234 North Fremont Street; this apartment had only one bedroom. The three-story building is owned by one Kluczyk, who was a witness. It consists of six apartments, three in the front half of the building and three in the rear. The three front apartments are not connected with the rear apartments in any way; the front apartments can be entered only through the single front entrance to the building, and the rear apartments must be entered through an entrance at the rear of the building. Of the three front apartments, the Kluczyks lived on the first floor, the Probsts on the second floor, and the Haupts on the third floor. Both the Kluczyks and the Probsts testified to these facts and that Herbert at no time lived in their apartments. (R. 214–216, 231–232, 237–240, 252; and see R. 325, 445.)

June 22, 1942.—From the testimony of never less than two F. B. I. agents at any one time, it appeared that surveillance of the Haupt residence was started at about 10:30 a. m. Monday, June 22, 1942, and continued until Herbert's arrest on June 27; that Herbert was first seen there on June 22 at approximately 12:25 p. m., when he alighted from a taxicab that had stopped in front of the building in which petitioner lived;

that Herbert walked up the front steps of the building and into the front entrance; and that he was observed leaving the front entrance of the building at 1:45 p. m. (R. 421–425).

At 5:15 p. m. Herbert reentered the front door to the building in which the Haupts lived (R. 423, 425–426). At 7:30 p. m. that same evening, petitioner, accompanied by Herbert and Mrs. Haupt, were observed emerging from the front entrance. They entered petitioner's automobile, and Herbert drove the car around the corner, at which point petitioner took over the operation of the automobile. They were followed by the F. B. I. agents, as we have shown *supra*, pp. 12, 13, to the homes of Grunau and Koch, and later in the evening they returned to the Haupt residence, Herbert and Mrs. Haupt going into the building and petitioner thereafter driving away. Shortly after Herbert and Mrs. Haupt entered the building, the lights in the Haupt apartment were extinguished. (R. 431–433, 440–442, 447–448, 453–455, 463–465, 468–469.)

Mrs. Kluczyk, the wife of the owner of the building, testified that Herbert had lived with his parents prior to the time he left the country, and that she did not see him again until about 11 a. m. on June 22, 1942, in front of the building. On the evening of June 22, Herbert, petitioner, and Mrs. Haupt stopped in the Kluczyks' apartment for a short visit before leaving the building. At that time Herbert stated, in the presence of

petitioner, that he had been in Mexico, South America, and "all over." (R. 216, 221–222; see also the similar testimony of two other witnesses, R. 231–237, 240–246.)[8]

June 23, 1942.—At 12:20 p. m. on June 23, Herbert and Mrs. Haupt were observed emerging from the front entrance to the building (R. 427). At 5:15 p. m. Herbert returned and entered the building (R. 428, 442–443, 483). At about 6:00 p. m. petitioner, Herbert, and Mrs. Haupt came out of the front entrance and proceeded in the Haupt automobile to a restaurant, where they remained for forty-five minutes. When they left the restaurant, Mrs. Haupt separated from the two men, and they proceeded to an automobile sales agency (see *infra*, p. 20). Petitioner and Herbert later drove to their home. Petitioner entered the building, but Herbert walked to a specified street corner. Petitioner came out of the building shortly thereafter and met Herbert at the corner. Both men shortly thereafter returned to the Haupt residence. (R. 428–430, 442–444, 470–472, 483–484.)

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[8] Mrs. Kluczyk also testified that she had known the Haupt family for twelve years (R. 216); that Herbert left home in June 1941 (R. 216); that at a later date Mrs. Haupt showed her a telegram petitioner had received from Herbert in Tokyo (R. 217–218); that on December 7, 1941, in the presence of petitioner, Mrs. Haupt told her that they were sending a telegram to Herbert in Tokyo (R. 218–219); and that on June 19, 1942, Mrs. Haupt asked her to tell petitioner, when he returned to work, to come to his sister-in-law's house (where Herbert then was) (R. 220).

In the meantime, between 7:30 p. m. and 8:00 p. m., Gustave Zermer, a friend of petitioner's (R. 327–329), arrived at the Haupt apartment (R. 329). Shortly after he entered, Herbert and petitioner also entered together (R. 330). Mrs. Haupt had supper waiting for petitioner and Herbert, so Zermer remained in the parlor while the three Haupts ate in the kitchen (R. 331–332). Meanwhile Mrs. Saure (at that time Miss Melind, a friend of Herbert's) had also come to the Haupt apartment (R. 331). When the meal was completed Zermer joined the elder Haupts in the kitchen and Herbert joined Mrs. Saure in the parlor (R. 332). Both Zermer and Mrs. Saure testified to these facts.

At about 10 or 10:30 p. m., Herbert and Mrs. Saure left the Haupt apartment (R. 323, 472, 485, 489). They proceeded in the Haupt automobile to a tavern. Later, Herbert drove Mrs. Saure to her home and then returned to the Haupt building (R. 430, 444, 489). As on the previous evening, within a few minutes after Herbert entered the building the lights in the Haupt apartment were extinguished (R. 495).

June 24, 1942.—At 7:00 a. m. on this date, petitioner emerged from the apartment building and drove off in his automobile, which Herbert had parked in front of the building when he returned home the previous evening (R. 445). Shortly after noon, two witnesses who were in the Kluczyk

apartment on the first floor heard Herbert and Mrs. Haupt come down the stairs from the Haupt apartment (R. 223, 243–244). Herbert waited in front of the building for a taxicab and drove off in it (R. 445, 485). At 5:30 p. m. Herbert returned and was observed entering the front entrance of the building (R. 455–456). At 6:00 p. m. petitioner and Herbert came out of the building and entered petitioner's automobile and drove to an automobile agency (see *infra*, p. 21; R. 449). Shortly thereafter, Herbert was observed driving away from the automobile agency with a newly acquired Pontiac automobile (R. 449). He arrived at the apartment building at 6:35 p. m. and was observed entering the front door of the building (R. 449, 457). Ten minutes later he left the building and drove to two places, returning at 9:15 p. m. He did not enter the building, but drove off again and returned at 1:00 a. m., June 25 (R. 449–450, 457–459). Shortly after Herbert entered the building the lights in the Haupt apartment were extinguished (R. 434, 462).

June 25, 1942.—At 7:00 a. m., petitioner was seen to emerge from the front entrance to the building. He stood in front of the building, talking to one Carl Eggert, who was waiting for him. While they were conversing, Herbert was also observed coming out the front door (R. 465, 377–378). He drove away in his newly acquired

Pontiac automobile, and returned to the Haupt building at 4:20 p. m. (R. 446, 451, 466). He left the building at 6:45 p .m., wearing different clothing than he had on when he entered (R. 466). He returned at midnight, and, a few minutes after he entered the building, the lights in the Haupt apartment were extinguished (R. 490, 494).

June 26, 1942.—At 7:00 a. m., petitioner was seen leaving the apartment building, and at 9:00 a. m. Herbert came out dressed in different clothing than that which he wore when he entered the building the previous night (R. 490–491, 493, 495). At 5:00 p. m., petitioner returned, and at 6:00 p. m. Herbert returned, both of them entering the building through the front door (R. 466–467, 486). At 7:15 p. m., petitioner left the premises, and at 8:00 p. m. Herbert and Mrs. Haupt were seen leaving the building (R. 467). Herbert returned at 1:50 a. m., at which time he drove up in front of the Haupt home, parked the Pontiac coupe, sat in front of the residence, talked with another young man, and then entered the building (R. 446, 451, 486). When Herbert entered the building the light in the Haupt apartment were not on; they were put on a few minutes later and were extinguished in about ten minutes (R. 491–492).

June 27, 1942.—As we have shown above, Herbert entered the Haupt building at 1:50 a. m.

At 9:05 a. m. he emerged from the building, got into his car, and drove for a few blocks. At this point the F. B. I. agents stopped him and placed him under arrest. (R. 424, 446–447, 451, 480–481, 486–487, 492.)

(iii) PURCHASING AN AUTOMOBILE FOR HERBERT

Overt Acts Nos. 13–16.—These overt acts relate to petitioner's acquistion of a Pontiac automobile for Herbert; they charged that petitioner accompanied Herbert on June 23 and 24 to the Warner Motor Sales Company to arrange for the purchase of an automobile for Herbert and that petitioner signed a financial statement, ordered the car, made an initial down payment on the purchase price, thereafter made a further payment, and completed arrangements for, and did purchase, an automobile for Herbert for the purpose of assisting him in carrying out his mission as an agent of the German Reich.

On the evening of Tuesday, June 23, after having supper with Mrs. Haupt and Herbert at a restaurant (*supra*, p. 16), petitioner drove Herbert to the Warner Motor Sales Company in Chicago (R. 428–429, 443, 471, 484). They entered the showroom, and petitioner told Farrell, a salesman, that he wanted to buy a good used late-model car (R. 304). Petitioner selected a 1941 model Pontiac automobile and inquired if he could purchase it on the installment plan. In response to the salesman's inquiry whether he

had a car to trade in, petitioner said that he had a car, but he did not intend to trade it in; that the new car was for Herbert (R. 304). Petitioner paid a $10 deposit on the purchase price of $1,045 and said that he would come in the next day to make a further payment. Petitioner furnished financial references and signed an order for the car (R. 304–305). During the course of the negotiations, Vinson, the manager, came in and participated in the transaction (R. 305, 312, 314). Both Farrell and Vinson testified as to these events.

On the following evening petitioner and Herbert again went to the Warner Motor Sales Company, and petitioner made an additional payment of $405 on the purchase price. Included in the additional payment were three fifty dollar bills (R. 306, 316).[7] Petitioner signed a note for the balance due and executed the usual finance contract (R. 307, 309). The bill of sale was made out to petitioner (Gov. Ex. No. 55, R. 587). The car was delivered to Herbert, and he drove it away from the sales agency (R. 449). Farrell's testimony to this effect was corroborated by that of Vinson, who testified that he saw petitioner and Herbert come in and that he received the money petitioner paid and the note which petitioner signed (R. 315–316).

[7] Burger testified that Herbert had $5,000 in fifty-dollar bills in a money belt (R. 139–140).

C. PETITIONER'S KNOWLEDGE OF HERBERT'S ENEMY STATUS AND PETITIONER'S INTENT TO BETRAY

To a large degree the Government relied upon petitioner's admissions and other declarations to show that he was aware of Herbert's role as an enemy agent and that he cooperated with Herbert to enable him to carry out his mission. The circumstances under which such statements were made and their nature may be summarized as follows:*

1. Petitioner was arraigned before a United States Commissioner on July 21, 1942. He was advised of the charge against him; he pleaded not guilty; and the matter was then continued before the Commissioner until August 5. (R. 407, 416, 636, 638, 639.) Shortly before noon on August 5, petitioner was present in the "cell room" of the Marshal's office preparatory to further proceedings before the Commissioner at 2:00 p. m. (R. 407). Petitioner summoned the Marshal and said he wanted to talk to an F. B. I. agent (R. 407). In compliance with petitioner's request, two F. B. I. agents were summoned and they talked with petitioner in a private room in the Marshal's office (R. 407–408, 411–412, 417). Petitioner volunteered some information, and the remainder was obtained in answer to questions posed by one of the F. B. I. agents (R. 414–415).

* The jury was instructed that this evidence should be considered only on the issue of treasonable intent (R. 41-42, 500, 515, 587).

Petitioner told the agents, at the opening of the interview, that "he was very mad at Otto Wergin[9] and his wife, because he blamed the predicament of his son on them, and he wanted to testify in court against them" (R. 412, 417). Petitioner then said that on Saturday, June 20, 1942, he, Mrs. Haupt, and Herbert visited the Wergin home and that at that time Herbert told a complete story of his trip to Mexico; how he contacted the German Consul and obtained passage to Japan; how thereafter he ran the British blockade and landed in France and ultimately reached Germany. Petitioner said that Herbert told them that he had been in an "Intelligence School" and that "he had a huge sum of money to use in connection with that over here." Herbert told also of his return to the United States by submarine.[10] (R. 412, 413, 417.)

Petitioner further told the F. B. I. agents that on Friday night, June 19, 1942, he and his

[9] Wergin and his wife subsequently were jointly indicted for treason with petitioner and Mrs. Haupt and with Walter Froehling and his wife. They were all convicted, but the convictions were reversed upon appeal. See *United States* v. *Haupt*, 136 F. 2d 661 (C. C. A. 7). According to the Department's records, Wergin and Froehling subsequently pleaded guilty to misprision of treason, in violation of Section 3 of the Criminal Code (18 U. S. C. 3) and each was sentenced to imprisonment for five years.

[10] Petitioner said that at this time Wergin offered his services to Haupt "because he could use some of the money" which Herbert had (R. 413).

wife were present at the Froehling [11] home where Herbert also related his experience after leaving Chicago (R. 413, 418). According to petitioner's statement to the agents, the Wergins and Haupts were present at the Froehling home on Sunday, June 21, 1942, and Herbert again discussed his trip to Japan and Germany, the intelligence school, and his return to this country by German submarine. They became apprehensive that other people in the building might overhear them, so the Haupts and Wergins left the Froehling home and went to the Haupt's apartment, where "again Herbie Haupt discussed his story." Petitioner advised the F. B. I. agents that it was because the Wergins encouraged Herbert to carry out his mission that he wanted to testify against them in court. (R. 413.)

Petitioner further told the agents that on the following Saturday night, June 27 (the day on which Herbert was arrested), the Froehlings, the Wergins, and petitioner and Mrs. Haupt were together in the Haupt apartment, and that "because Herbie had not shown up all day, they became rather fearful that something had happened to him, and at that time they all * * * decided that if anything had happened to Herbie, or if they were questioned, they would all tell the same story, that they knew nothing about his

[11] Herbert was Mr. Froehling's nephew. See R. 220, 589, and 130 F. 2d 661.

activities, except the fact that he had gone to Mexico." (R. 413, 418.)

2. The witnesses Majerczak (R. 519–564) and Hamby (R. 564–584) were confined in the Cook County, Illinois, jail at the same time that petitioner was there (R. 520, 566–567).[12] Beginning on July 21, 1942, they talked with petitioner concerning his case and concerning their own cases (R. 521–524, 568). They testified that it was after petitioner learned from a newspaper that Herbert had been executed that he began talking of him and his activities (R. 523–525, 568–569). In the course of the various conversations, petitioner said that he had been arrested because Herbert had given him United States money which Herbert obtained in Germany (R. 522–523, 528–529, 570); that Herbert had originally gone to Germany to join the German Army, with petitioner's approval (R. 525, 570); that about a year after Herbert left, petitioner was summoned to the Froehlings' home and Herbert was waiting for him there (R. 525, 528, 571); that Herbert told him of his training in Germany and of his sabotage mission in this country (R. 525–528, 570–572, 577), "to blow up the ammunition dumps, and many factories" (R. 571); that

[12] Both witnesses were then in custody under state charges, and both were convicted and sentenced to life imprisonment in the state penitentiary; both were confined in the state penitentiary under those sentences when they were called as witnesses (R. 519–520, 564–566).

he knew that Herbert "was here for no good reason" (R. 526); that he promised to assist Herbert as much as he could (R. 571); that Herbert gave him $1,000 with which to purchase an automobile for him, and that he purchased an automobile for Herbert (R. 528–530, 571–572); that he received other money from Herbert for safekeeping, which he hid under a rug (R. 528–529, 571); that Herbert told him that he wanted to obtain a job with "the Optical Company," so that he could obtain information in respect of "some kind of a sight" (R. 574); that petitioner did not advise the Government authorities of Herbert's mission because "his son was his own flesh and blood and after all he was helping the fatherland" (R. 573); and that petitioner said "the United States Army was nothing but a bunch of punks, and they are going to fall and they are going to [be] whipped like France and all the rest of the countries" (R. 573); and that at the conclusion of the war, petitioner intended to return to Germany (R. 531).

3. Gustave Zermer, a friend of petitioner's (R. 329), testified that he was present in the Haupt apartment on June 23, 1942 (see *supra*, p. 17), and that at that time petitioner told Zermer that Herbert would be "traveling around all the time" and that he wanted "my address for the mail" (R. 333, 334). Petitioner suggested that Herbert's mail would be sent to Zermer's address and

that Zermer should bring it to petitioner (R. 333–334, 337–338). Zermer agreed to the arrangement (R. 338). Zermer also testified that petitioner inquired whether Herbert could obtain living accommodations in the house where Zermer lived; and that petitioner said that "he was afraid to have Herbert around the house" (R. 336).

4. Carl Eggert, a friend and employee of petitioner's (R. 374–376), testified that he met petitioner at a tavern on Sunday, June 28, 1942 (the day following Herbert's apprehension), and that petitioner paid a debt owed to him by giving him two fifty dollar bills (R. 379).[13] After they had been in the tavern a few minutes petitioner summoned Eggert into a back room and in a voice "just so I could understand it," petitioner said, "Carl, I have $900 of my own money. You can do me a favor and keep it for me. Then I am afraid now the F. B. I. comes in my home and takes it away" (R. 379–380.) Eggert agreed to keep the money for petitioner (R. 380). About three-quarters of an hour later petitioner appeared at Eggert's home and gave him a closed envelope, which Eggert subsequently learned contained eighteen fifty dollar bills (R. 380–382).

5. In addition to the evidence detailed above, the Government adduced the testimony of three

[13] Herbert received $5,000 in fifty dollar bills in a money belt before leaving Germany; note 7, *supra*, p. 21.

witnesses which was concerned exclusively with statements made by petitioner commencing in 1936 which showed that he was more favorably disposed to Nazi Germany than he was to the United States. This testimony was also restricted to the issue of treasonable intent (R. 41–42, 500, 515, 587).

Schroeder, a friend and a fellow worker of petitioner's (R. 498–499), testified that in 1936 and 1937 petitioner told him that he liked Hitler very much (R. 501) and that "we needed a man like Hitler here to rule the country like it was built up over there * * *" (R. 501); that at a meeting of the German World War Veterans in 1939 Schroeder had opposed the sending of money to Germany because Hitler might use it for the purchase of armaments, and that petitioner came to him after the meeting and told Schroeder that "I should shame myself, that I am born in Germany," that "I am not a good German" (R. 506). Some time after Mrs. Haupt had visited Germany and after the German invasion of Poland and France, petitioner told Schroeder that he would kill Herbert himself before he would send him over to Germany to fight against Germany (R. 509).

Mrs. Fishman testified that in 1940 petitioner and Mrs. Haupt worked for her "as a couple" and that they and Herbert lived on her premises (R. 512); that petitioner told her that on weekends Herbert attended a Bund camp at Luding-

ton, Michigan (R. 512);[14] that petitioner said that "they would go up there and train; it was the proper thing for German people who were real Germans to send their children there and raise them like that" (R. 513); that in May 1940, petitioner said, "Hitler was a God-send to the German people" (R. 515); that "if we entered war against Germany we would have a revolution in this country like they had there after the last war; that we have German organizations back here that would take our armories over, our electrical companies, our telephone companies; that the same thing would happen to us as happened in Norway and France, that we would be taken from within by Fifth Column activities" (R. 516–517); and that this would be done by the German organizations to which he belonged (R. 517).

Hans Poppe testified that he had known petitioner since 1936 (R. 587–588) and that they had worked together from 1937 to 1939 (R. 588); that on several occasions in 1939, petitioner told him that he took Herbert and other boys to a Bund camp in Michigan (R. 589–590);[15] that petitioner said in 1939 that "if war would break out with the United States and Germany, he would never permit his boy to join the American Army. He would send him to Mexico, and from

[14] There was other evidence that Herbert regularly attended Bund meetings (R. 401–402).

[15] See note 14, *supra*.

there he could go to Germany and join the Air Force" (R. 590); that petitioner said further that if this country should "take him in the Army, he would crawl over the enemy lines and tell them our position" (R. 590); and that petitioner said in 1939 that "he had no feeling for the United States at all. His feelings were only for Germany, and he wished Hitler would come over here and drive all the Jews out, because the Jews are running this country" (R. 590–591).

SUMMARY OF ARGUMENT

1. The indictment charged and the evidence established the offense of treason.

A. The overt acts submitted to the jury charged (1) that petitioner sheltered and harbored an enemy agent engaged in a hostile mission, (2) that he arranged for and consummated the purchase of an automobile for the agent's use, and (3) that he assisted the agent in obtaining employment. All these acts were acts of direct aid and comfort to the agent and to the enemy nation which he represented. Obviously, the giving of food and shelter to an enemy agent aids and comforts that agent. Similarly, the furnishing of any means of transportation to the enemy is an overt act of aid and comfort, and has always been so considered. Moreover, in their setting here, the arrangements for and the purchase of the automobile for Herbert assisted him in carrying out the specific command

of his German superiors, to procure an automobile for the use of his fellow saboteurs.

Likewise, while assisting an enemy agent to obtain any kind of employment is an act of aid and comfort, since it enables him to conceal his enemy character, here petitioner's aid was more than just generalized help. For Herbert had been expressly ordered to get employment with the Simpson Optical Company, in order to get information about the bombsight which was being manufactured there, and in order to get information about the plant itself so that it could be more effectually destroyed. Petitioner's acts therefore directly contributed to the success of Herbert's mission. And regardless of whether petitioner was silent at the interviews, his mere presence there, at the home of his friends who were foremen at the plant, added weight to Herbert's application; and his silence, in the face of Herbert's false story, amounted to confirmation of that tale. Petitioner's silence was not neutral conduct. It backed up the false story, dispelled suspicion, and lent an air of honest family respectability to an enemy sabotage mission. Certainly petitioner's friends would not for a moment have considered giving Herbert a job if they had known that he was an enemy agent with the dual mission of spying out the plant's secrets and of thereafter blowing it up. To suggest, therefore, that petitioner's presence did not amount to aid

in obtaining employment is utterly to ignore the realities.

The circumstance that the overt acts charged were also services which a father might normally render to a son does not change their character as acts of aid and comfort. A father performing such acts unquestionably gives aid and comfort to his son, and when that son is an enemy spy and saboteur, then he necessarily gives aid and comfort to the enemy. The ultimate treasonable character of the acts may depend on the intent with which they were performed, but that circumstance in no way minimizes their effect as aid to the enemy. Consequently the overt acts submitted to the jury were legally sufficient overt acts of treason within the rule of *Cramer* v. *United States,* 325 U. S. 1.

B. The doing of the overt acts was not seriously contested at the trial, and the real issue there was as to intent. There was ample evidence from which the jury could find that, with knowledge of Herbert's hostile mission, petitioner intended to and did aid that mission. Since petitioner knew that aiding his son's mission would further enemy plans, he must have intended to aid the enemy. That he may also have been motivated by a desire to aid his son does not render his acts less treasonable. *Cramer* v. *United States,* 325 U. S. 1, 31, 55; *Hanauer* v. *Doane,* 12 Wall. 342, 347. The instructions to the jury on motive

and intent fully complied with the standards laid down in the *Cramer* case and correctly rejected petitioner's notion that the father-son relationship was itself a defense to the charge. As the trial judge properly noted, "I have no right to help my son commit treason."

2. In order to determine whether all of the overt acts submitted to the jury were proved by "the Testimony of two Witnesses" as required by the Constitution, it is necessary to ascertain the significance of the constitutional provisions, "not simply by taking the words and a dictionary, but by considering their origin and the line of their growth." *Gompers* v. *United States*, 233 U. S. 604, 610.

A. After the two-witness rule in treason prosecutions had become a part of English law by the St. 7 Will. III, c. 3, the English courts before the American Revolution did not require that evidence be direct in the sense that it be direct eye-witness proof which excluded all process of inference. The treatises, and trials had before judges of the stature of Holt, Foster, and Lord Mansfield, show that while evidence which gave rise merely to an inference of guilt was rejected, evidence which directly tended to establish that the act charged had been committed was held sufficient, even though it might not be eye-witness testimony, and even though eye-witness testimony had to be interpreted in the light of the circum-

stances to which it related. It was enough that the matter appear "plainly, clearly, and satisfactorily."

B. It is abundantly clear from the historical evidence that the two-witness requirement in the Constitution had its origin in the terms of the St. 7 Will. III, which was well known to the American bar. The debates show that the modification made in the Convention, requiring two witnesses to the same overt act at all times (and not merely when only one such act was alleged), was directed against prosecutions inspired by virulence and supported by perjury, and was adopted at a time when the defendant in a criminal trial was not a competent witness on his own behalf.

C. Expressions of judges who participated in the framing and adoption of the Constitution indicate that, as to such of the antecedent statutory provisions as were carried over into that instrument, the English interpretations are to be followed. There is no intimation to the contrary by any judge whose adult life was contemporaneous with ratification. And the first two American decisions on the nature of the required two-witness testimony in fact apply the standards developed in England under the St. 7 Will. III, and support the conclusion that the necessity for some interpretation does not render the testimony insufficient. *United States* v. *Mitchell,* 2 Dall. 348 (1795); *United States* v. *Burr,* Fed. Case No. 14693 (1807). The ruling in the *Mitchell* case,

that the requirement is satisfied if each witness testifies to complementary parts of a continuous act, was expressly approved by Chief Justice Marshall at the trial of *Burr*. What was said in the latter case about the infirmity of "presumptive evidence" dealt with a situation where the prosecution attempted to show the defendant constructively present at a place where the evidence showed him to be not present. Both decisions permit normal and compelling inferences to be drawn from the corroborating evidence of several witnesses. The only modern cases on the sufficiency of evidence which seem to be opposed deal with entirely different factual situations.

D. Viewed in the light of what the constitutional provision really means, the overt acts here fully meet the test laid down.

The only substantial challenge to the sufficiency of the two-witness proof is to the evidence relating to harboring on days other than June 23, 1942, when no witness testified to having seen petitioner and Herbert together in petitioner's apartment. There was, however, direct observation by two witnesses of petitioner and of the spy whom he was accused of aiding at the time and location at which aid was alleged to have been given. There was also direct testimony by two witnesses as to the physical surroundings in which petitioner and the spy whom he aided moved. All the evidence directly related to the act in question. The competent facts, each di-

rectly observed by two witnesses, left nothing to conjecture, and compellingly and inescapably established that petitioner was harboring Herbert at the time and place that the observations were made. In those circumstances the constitutional requirement is fully satisfied.

Cramer v. *United States,* 325 U. S. 1, is not to the contrary; it dealt with a situation where the *quality* of the act was in question, not the *doing* of the act. Here the instructions to the jury required proof by "two direct witnesses," and rejected petitioner's view that eye-witnesses were required. Those instructions were correct. To contend that the overt acts here involved were not proved by two witnesses would pervert a basic constitutional guarantee into a ritualistic abracadabra wholly unrelated to its purpose.

3. Even if some of the overt acts should be deemed not to have been proved by the testimony of two sufficient witnesses, the judgment of conviction must still be affirmed.

A. There can be no doubt that a person who, with intent to betray, commits a single overt act of aid and comfort to the enemy, and who is proved to have committed such act by the testimony of two sufficient witnesses, may properly be convicted of treason. The elements of the crime are not changed because the indictment alleges more than one overt act. And a person who is shown by proper proof to have committed one

act of treason is not entitled to go free because he did not commit another such act as well. Accordingly, it was proper to instruct the jury that they could convict on finding that one overt act had been established by two witnesses. Such has always been the law, in an unbroken line of authority from the early English cases down to the present time, from the *Trial of the Regicides*, 5 How. St. Tr. 947 (1660), through *Stephan* v. *United States*, 133 F. 2d 87, certiorari denied, 318 U. S. 781, rehearing denied, 319 U. S. 783, application for allowance of direct appeal denied, 319 U. S. 423 (1943). Every modern American jury considering a case of treason has uniformly been charged to the same effect.

B. In ordinary criminal cases where numerous overt acts are alleged, it has always been considered sufficient to support a verdict if, on appeal, a single overt act is shown to be supported by evidence. This is the unquestioned rule in conspiracy cases. Similarly, in mail fraud cases, it is sufficient on appeal if the evidence shows that the scheme to defraud was devised by at least one of the means or representations alleged, regardless of how many others may have been laid in the indictment. Likewise, a sentence is good on appeal if supported by a single good count, regardless of whether the trial judge in fact would have imposed that sentence had he known of the infirmities on the other counts, because "the pre-

sumption of law is that the court awarded sentence on the good count only." *Claassen* v. *United States*, 142 U. S. 140, 146–147.

Moreover, where an indictment consists of several counts, a general verdict of "guilty as charged" will stand if any of the counts is good. While this situation is distinguishable for at least two reasons, the jury in such cases may well have rested its verdict largely on the counts later held bad. Here, if instead of one count with twenty-nine overt acts, there had been an indictment with twenty-nine counts each alleging a single overt act, a general verdict would have been unassailable.

C. Since special verdicts are not generally employed in criminal cases (compare F. R. Crim. P. 31 with F. R. Civ. P. 49), a contrary rule would mean that a defendant could never be charged with more than one overt act of treason except at the risk of acquittal if a single additional overt act submitted to the jury failed of proof. This would mean that the more active the traitor and the more complex his treason, the better his chances of escaping punishment. This would also completely overturn the hitherto settled rule in treason cases.

There is no precedent for asking for special verdicts in cases where several overt acts are charged in an indictment, and petitioner did not ask for special findings here. Even if a special verdict had been rendered, the conviction would still have been good if all but a single overt act

so specially found had been held insufficient on appeal. And here, where the jury were told that an overt act must be proved beyond a reasonable doubt, and by two direct witnesses, and were further told that the submission to them of any overt act carried no suggestion that such overt act had in fact been committed, the question of the evidentiary sufficiency of the overt acts was properly left to them as triers of the facts. The rule contended for by petitioner, that the whole conviction fails if the evidentiary sufficiency of any overt act fails, would invade the province of the jury, and would substitute this Court for a properly instructed jury in the determination of whether he, in fact, did the acts he was charged with doing.

D. The only authorities apparently to the contrary involve situations where, by misdirection of the jury, the prosecution was predicated on an unconstitutional ground or statute. *Stromberg* v. *California,* 283 U. S. 359, 368; *Williams* v. *North Carolina,* 317 U. S. 287, 292. Those cases were, without question, properly decided on their facts; but they do not support the broad and generalized rule stated in the *Cramer* footnote, 325 U. S. 1, 36, n. 45, that "Since it is not possible to identify the grounds on which Cramer was convicted, the verdict must be set aside if any of the separable acts submitted was insufficient." The justification for setting aside Cramer's conviction must be found in the circumstance that it appeared prob-

able that he was found guilty on the insufficient overt acts. Because of the misdirection there, it is highly unlikely that the jury would have found Cramer guilty of treason simply because of a false statement to an F. B. I. agent, which was retracted almost immediately thereafter.

The rule of the *Stromberg, Williams,* and *Cramer* cases is a rule of reason, not an immutable absolute. The *Cramer* footnote did not purport to question the rule of the conspiracy or mail fraud cases, nor to alter the rule of the treason cases, which was not even discussed in the voluminous briefs there filed. The authorities not only do not support the application of the rule as stated in the *Cramer* footnote to a treason case such as this one; on the contrary, the basic approach of the general authorities, of the cases involving analogous offenses, and of the consistent rule in treason cases, is uniformly the other way.

E. In the present case it is utterly unreasonable to suppose that the jury could have rested its verdict on the overt acts whose sufficiency as to proof is disputed. The only conceivable challenge in this respect is as to the evidence of harboring on the days when no witnesses were in petitioner's apartment.

Actually, however, those overt acts charge only a single act of aid and comfort: sheltering and harboring an enemy saboteur. As a matter of draftsmanship, all the days could have been charged as a single overt act. The time was not a

matter of substance; the essence was not the harboring on any one day, but the act of harboring. That act was clearly proved by two witnesses. The doing of the overt acts was scarcely contested at the trial; and it would certainly be highly unreasonable to suppose that the jury would have disbelieved the two witnesses who saw Herbert inside the apartment and would have believed only the witnesses who saw him with petitioner outside the apartment. Since there is here no possibility that the verdict was based on conduct which was insufficient, there is no reason to invoke the extraordinary rule of the *Stromberg, Williams* and *Cramer* cases, which themselves involve a departure from normal principles of appellate review in criminal cases.

A reversal here on the ground that any of the overt acts failed of proof would turn appellate review into a contest between the draftsman of the indictment and the ultimate reviewing court; would exalt form over substance; and would legislate into the law of treason a qualification which no English or American judge ever found there prior to August 1943, and one which the Founders certainly did not fashion.

4. There were no errors in the admission of evidence.

A. This Court in *Cramer* v. *United States*, 325 U. S. 1, reaffirmed the rule that intent in cases of treason need not be proved by two witnesses,

and that any relevant evidence could properly be offered in addition to the required two-witness proof of an overt act. It was thus proper to admit, on the issue of intent, evidence of (1) pre-war statements by petitioner showing intense devotion to Hitler and to Germany; (2) one-witness testimony concerning overt acts alleged in the indictment but not submitted to the jury as overt acts of treason; and (3) extra-judicial admissions by petitioner.

The pre-war statements were not of general criticism of the United States or refusal to buy war bonds, but were statements expressing petitioner's intent to be loyal to Germany and to urge his son to serve in the German armed forces in the event of a war between Germany and the United States. They reflected petitioner's feeling of allegiance to a foreign power, and thus had a direct bearing on the intent with which he performed the acts of aid and comfort submitted to the jury.

Evidence of overt acts withdrawn from the jury could not, of course, supply a deficiency in the two-witness proof of the submitted overt acts, but it was clearly relevant to show the intent with which the properly proved overt acts were done. Even under the St. 7 Will. III, which provided that no evidence could be given of overt acts not expressly laid in the indictment, it was consistently held that an overt act not laid might

be given in evidence if it be direct proof of any of the overt acts that were laid. And on principle, clearly, the circumstance that particular overt acts were first alleged and then withdrawn does not render evidence thereof less relevant on the issue of intent.

Petitioner's extra-judicial confessions were likewise admissible. The Constitution, following the St. 7 Will. III, permits a confession as a substitute for two-witness proof of the overt act only if the confession is made in open court; but where the overt act is otherwise sufficiently proved by two witnesses, that provision does not preclude the use of an extra-judicial confession as additio al evidence, by way of corroboration. This point is clear on principle, and on the authority of both the English cases and of the early American treason cases before and after the adoption of the Constitution.

B. The testimony concerning the nature of the saboteurs' mission, and the exhibits introduced in connection therewith were admitted solely on the issue of Herbert's enemy status. Since it was an essential part of the prosecution's case to prove that Herbert was an enemy agent in this country for the purpose of performing a hostile mission, this evidence was properly received for the limited purpose for which it was offered.

C. It was proper to permit the prosecution to cross-examine one of its own witnesses, since that witness professed ignorance in regard to matters

about which he had previously testified in considerable detail.

5. There was no misconduct on the part of Government counsel in their closing arguments to the jury. Most of the matters objected to were references to testimony which petitioner erroneously assumes to be incompetent. For the rest, a reading of the prosecution's summing up establishes that Government counsel exercised due restraint, and conducted themselves at all times in a thoroughly lawyer-like manner. The charge that they appealed to prejudice of war hysteria is totally unfounded.

6. Petitioner's objections to the trial judge's charge to the jury are based largely on matters already discussed elsewhere in this brief, i. e., the distinction between intent and motive, the instruction that one overt act proved by two direct witnesses was sufficient to convict, and the consideration to be given to the testimony offered on the issue of intent. Petitioner's requested instructions either embodied erroneous theories of law, or else were adequately covered in the judge's charges. The instructions given were correct, and the record reflects the painstaking care with which they were framed.

7. No errors occurred in connection with the deliberations of the jury.

A. Sending copies of the indictment and of the charge into the jury room was clearly a matter within the trial judge's discretion; and, in a case

as complex as this one, that discretion was not abused.

B. The judge's decision to accede to the jury's request for the rereading of a portion of the testimony was likewise a matter within his discretion. Here the rereading was accompanied by a warning to the jury not to give undue weight to the testimony which was being reread.

C. The jury's deliberations were neither unusually nor unduly long. Compare *Hyde* v. *United States*, 225 U. S. 347, 383.

D. After the jury rendered its verdict, it submitted to the court a plea for clemency, signed by all the jurors. In consequence of this action the trial judge did not sentence petitioner to death, as he would otherwise have done. Accordingly, petitioner's contention here, that the verdict of the jury was the result of war hysteria, passion, and prejudice, is shown by the record to be wholly without support in fact.

ARGUMENT

I. THE INDICTMENT CHARGED AND THE EVIDENCE ESTABLISHED THE CRIME OF TREASON

A. *The overt acts were acts which gave the enemy aid and comfort.*—As we have shown above, pp. 10–21, the overt acts submitted to the jury fall into three categories: they charge (1) that petitioner harbored and gave shelter to Herbert, a known enemy agent; (2) that he assisted Herbert in obtaining employment; and (3) that he aided

in purchasing an automobile for Herbert's use. This mere recital completely refutes petitioner's contention (Pet. 41–45) that such acts are not overt acts of treason within the rule of *Cramer* v. *United States*, 325 U. S. 1. This Court there said (325 U. S. at 34) that

> The very minimum function that an overt act must perform in a treason prosecution is that it show sufficient action by the accused, in its setting, to sustain a finding that the accused actually gave aid and comfort to the enemy.

Sheltering an enemy spy, supplying him with means of transportation, and assisting him to obtain employment, are obviously not colorless acts; they are direct acts of assistance to the spy and to the enemy nation which he represents.

1. Petitioner does not seriously challenge the sufficiency of the harboring allegations as charging overt acts of treason, for undoubtedly the giving of food and shelter to an enemy spy aids and comforts the enemy. As the Court noted in the *Cramer* case, in commenting on the insufficiency of the overt acts there involved (325 U. S. at 37), "Cramer furnished them no shelter, nothing that can be called sustenance or supplies * * *."[16]

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[16] See also *Stephan* v. *United States*, 133 F. 2d 87, 93 (C. C. A. 6), certiorari denied, 318 U. S. 781, rehearing denied, 319 U. S. 783, application for allowance of direct appeal denied, 319 U. S. 423.

Petitioner concentrates his attack on overt acts 10, 11, 13, and 15, the first two charging that petitioner accompanied Herbert for the purpose of obtaining employment, and the latter two charging that petitioner accompanied Herbert to a motor sales agency to arrange for and complete the purchase of an automobile.[17] He argues (Pet. 41–45) that the act of accompanying Herbert in each instance is no more an act of aid and comfort to the enemy than the act of meeting which was held insufficient in the *Cramer* case. But such a contention misinterprets the *Cramer* decision. That decision did not hold that an act of meeting with a known enemy can never be an overt act of treason; it held only that proof of a meeting, without evidence of what transpired at the meeting, was insufficient to establish that the act of meeting gave aid and comfort to the enemy. As this court said (325 U. S. at 37),

> By direct testimony of two or more agents it was established that Cramer met Thiel and Kerling on the occasions and at the places charged and that they drank together and engaged long and earnestly in conversation. This is the sum of the overt acts as established by the testimony of two witnesses.

Here, on the other hand, the indictment charged that petitioner accompanied Herbert for

[17] The sufficiency of overt acts 14 and 16, alleging payments made by petitioner for the purchase of the automobile for Herbert, is apparently conceded.

specific purposes, to assist him in obtaining employment and to make arrangements for buying him an automobile, and those specific purposes were each proved by the direct testimony of two witnesses. And, if we regard each act of accompanying Herbert "in its setting", as the *Cramer* decision admonishes us to do (325 U. S. at 34), the sufficiency of these acts as acts giving aid and comfort is even more sharply underscored; for Herbert had been instructed by his German superiors to get employment at the Optical Company and to get an automobile (*supra*, pp. 7–8). Here petitioner's acts of accompanying Herbert directly and substantially furthered the success of Herbert's sabotage mission.

2. It cannot be doubted that the purchase of an automobile for an enemy agent, the purpose alleged in overt acts 13 and 15, is an act which gives aid and comfort to the enemy. The furnishing of any means of transportation to the enemy has always been held to be such an overt act. *Charge to Grand Jury*, 4 Blatchf. 518, 520–521, Fed. Case No. 18270, 30 Fed. Cas. at 1034 (C. C. S. D. N. Y.); *Charge to Grand Jury*, 1 Bond 609, 611, Fed. Case No. 18272, 30 Fed. Cas. at 1037 (C. C. S. D. Ohio).[18] And in their setting

[18] Similarly, the supplying of provisions to the enemy is considered an obvious overt act of adhering to the enemy, giving him aid and comfort. *United States* v. *Fricke*, 259 Fed. 673, 676 (S. D. N. Y.); *Charge to Grand Jury*, 4 Blatchf. 518, 520–521, Fed. Case No. 18270, 30 Fed. Cas. at 1034; *Charge to Grand Jury*, 5 Blatchf. 549, 550, Fed. Case No.

here, the arrangements for and purchase of the automobile for Herbert were not only abstractly acts of aid and comfort, they assisted Herbert in carrying out the specific orders of his superiors in Germany, to procure an automobile for the use of his fellow saboteurs, "to remove our explosives from the place where they were * * * hidden," and "to give us range for our operations" (R. 115, 116). It is difficult to think of anything that petitioner could have done for Herbert during those first few days after his return to Chicago that added more to the success of the saboteurs' mission than just precisely this purchase of an automobile.

3. Similarly, while assisting an enemy spy to obtain employment of any kind is normally an act of aid and comfort to him, since it enables him to mingle without suspicion with the population and thus to conceal his identity, petitioner's acts here which assisted Herbert to get

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18271, 30 Fed. Cas. at 1035 (C. C. S. D. N. Y.); *Charge to Grand Jury*, 1 Bond 609, 611, Fed. Case No. 18272, 30 Fed. Cas. at 1037; *United States* v. *Greathouse*, 4 Sawy. 457, 479, Fed. Case No. 15254, 26 Fed. Cas. at 24 (C. C. N. D. Cal.); see *Hanauer* v. *Doane*, 12 Wall 342, 347; *Carlisle* v. *United States*, 16 Wall. 147, 150–151.

And see Foster, *Crown Law*, 217: "Furnishing Rebels or Enemies with Money, Arms, Ammunition or other Necessaries will *Prima facie*, make a Man a Traitor."

All references in this brief to Foster, *Crown Law*, are to the folio edition of 1762, as that alone was available prior to the adoption of the Constitution. But the pagination in the second edition of 1791 is not materially different.

employment showed, when considered in their setting, more than just such generalized help. For Herbert had been specifically directed to get particular employment, with the Simpson Optical Co., for two reasons: first, to get information about the Norden bombsight which was being manufactured there, and second, to get information about the plant so that it could be more effectually blown up (R. 115, 120, 159, 160). Consequently, in this instance also, petitioner's acts were directly contributing to the success of Herbert's mission as that mission had been prescribed by the sabotage school in Germany.

Petitioner's argument that "no witness whatever offered any proof that the defendant assisted or attempted to assist Herbert Haupt to secure such employment" (Pet. 31) seems to be based on the circumstances that Herbert, rather than the petitioner, asked Grunau and Koch to re-employ him, and that it was Herbert who carried the brunt of the conversation during both interviews.

But this ignores the plain fact that petitioner's mere presence at the interviews was itself an act of assistance to Herbert, and one which added a weighty indorsement to Herbert's application. Both Grunau and Koch were friends of petitioner of long standing. Both were prospective employers. Any father who accompanies his sons to the homes of friends who are in a position to give employment does so precisely in

order to lend moral support and to place his imprimatur of approval on the son's application. That is why petitioner accompanied Herbert to the homes of Grunau and Koch instead of letting him take his chances at the company's employment office on his own.

Moreover, while Herbert falsely explained to petitioner's old friends that he had been in Mexico digging gold, petitioner, who knew that Herbert had been in Japan and Germany and knew as well of Herbert's sabotage mission, remained silent. Regardless of whether any duty to speak can be spelled out of such a situation, petitioner's silence in the circumstances amounted to confirmation. Certainly neither Grunau nor Koch, trusted foremen at the Simpson plant, would have considered giving Herbert a job if they had known that Herbert was an enemy agent with the dual mission of spying out the plant's secrets and of thereafter blowing it up. They would have known that if petitioner had not remained silent. Petitioner's failure to contradict Herbert's story implied a guarantee of the son's veracity, a confirmation of Herbert's lie that he had been digging gold in Mexico and that "we was only a little bit sailing" (R. 288). Petitioner's presence in the homes of his friends and his silent support of Herbert's tale, when he knew that recital to be false, was of very substantial assistance to an enemy agent engaged at that very moment in obtaining the precise employment which the German

Government had ordered him to get. Petitioner's actions were not neutral conduct; on the contrary, his conduct backed up Herbert's false story, dispelled suspicion, and lent an air of honest family respectability to an enemy sabotage mission. To say, therefore, as petitioner does, that there was no proof that he assisted or attempted to assist Herbert in securing employment at the optical plant, is simply to fly into the face of the facts and utterly to ignore the realities.

4. It is of course true that the ultimate treasonable character of all these overt acts depends on facts outside the acts themselves—on petitioner's knowledge of Haupt's hostile mission and on petitioner's intent to aid that mission. But those other facts go to the question of intent, not to the character of the overt acts as acts of aid and comfort to the enemy. We point out below, pp. 53–57, that the question of petitioner's intent to aid the enemy was decided against him by the verdict of the jury; here we are considering simply the character of the overt acts.

Petitioner seems to argue that, since the acts here charged are services which a father might normally render to his son, they cannot be overt acts of treason. But a father who supplies his son with food and shelter, who purchases an automobile for his son, and who assists his son in obtaining employment, unquestionably gives his son aid and comfort. When that son is an enemy spy, the father necessarily gives aid and comfort to the

enemy. And when, as here, the father knows that his son is engaged in a hostile mission and renders assistance with intent to aid that mission, then all the elements of the crime of treason have been established.

Had petitioner been wholly unaware of Herbert's enemy status, he would have lacked the necessary intent and so could not have been guilty of treason, but his acts would nevertheless have helped the enemy. Consequently, those acts are overt acts of treason within the rule of the *Cramer* case.

B. *Petitioner's treasonable intent was not nullified by his relationship to the enemy agent.*—In general, the actual occurrence of all the overt acts is not disputed, and was not seriously controverted at the trial. The fact that the purchase of the automobile was made for Herbert was conceded by petitioner's counsel both in his opening statement (R. 104–105) and in his summing up (R. 799); indeed, petitioner offered testimony designed to show that the purchase was made to replace an automobile which Herbert had left behind when he went to Germany (R. 632–634). The sheltering of Herbert by petitioner was virtually admitted, both in the opening (R. 105) and in the closing argument (R. 790–791, 800, 806–807), and the same is true as to assistance in obtaining employment (R. 105; 800, 804, 805, 806). The real issue at the trial, as defense counsel's arguments show (R. 798–808), was

not the doing of the overt acts, but the intent with which the acts were done.[19]

Petitioner does not deny that there was sufficient evidence from which the jury could infer that, with knowledge of Herbert's enemy status, he intended to and did assist him in the performance of that mission. The evidence, therefore, fully warranted the jury in finding that petitioner performed the acts of aid and comfort with intent to adhere to the enemy, *i. e.* that he had a specific treasonable intent. The fact that he may also have been motivated by a desire to aid his son does not render his conduct any the less treasonable. As this Court said in the *Cramer* case (325 U. S. at 31–32),

> * * * The law of treason, like the law of lesser crimes, assumes every man to intend the natural consequences which one standing in his circumstances and possessing his knowledge would reasonably expect to result from his acts. Proof that a citizen did give aid and comfort to an enemy may well be in the circumstances sufficient evidence that he adhered to that enemy and intended and purposed to strike at his own country. It may be doubted whether it would be what the founders intended, or whether it would well serve any of the ends

[19] See the close of the argument on behalf of petitioner (R. 808): "I ask you to set Hans Max Haupt free, for all he did is that he acted as a father to a son and not as a traitor. Hans Max Haupt is not a man with a black heart. * * *"

> they cherished, to hold the treason offense available to punish only those who make their treacherous intentions more evident than may be done by rendering aid and comfort to an enemy. Treason—insidious and dangerous treason—is the work of the shrewd and crafty more often than of the simple and impulsive.

Since petitioner knew that aiding his son's mission would further enemy plans, he must have intended to aid the enemy. His incidental motivation is immaterial. As the minority in the *Cramer* case pointed out, discussing the question of intent on which there was no division of opinion in this Court (325 U. S. at 55):

> "A man who voluntarily assists one known or believed to be an enemy agent may not defend on the ground that he betrayed his country for only thirty pieces of silver. * * * For the same reasons a man cannot slip through our treason law because his aid to those who would destroy his country was prompted by a desire to "accommodate a friend."

See also *Hanauer* v. *Doane*, 12 Wall. 342, 347; *Carlisle* v. *United States*, 16 Wall. 147, 150–151; *Sprott* v. *United States*, 20 Wall. 459, 463; *Stephan* v. *United States*, 133 F. 2d 87 (C. C. A. 6), certiorari denied, 318 U. S. 781, rehearing denied, 319 U. S. 783, application for allowance of direct appeal denied, 319 U. S. 423. The situation is not different because the enemy who is extended aid

is a son rather than a friend. Family loyalty does not override national allegiance. In the words of the trial judge (R. 682), "I have no right to help my son commit treason."

The charge to the jury on intent (Instructions Nos. 53–55, R. 40–41) was in complete accord with the principles thus laid down by this Court in the *Cramer* case. Petitioner's theory, that he should be set free because "all he did is that he acted as a father to a son and not as a traitor" (R. 808), received from the trial judge the full recognition to which it was entitled. Instruction No. 37 (R. 35) was:

> 37. If you are not satisfied, beyond a reasonable doubt, that the defendant's intention and purpose in acting as he did was evil, that is, if you are not satisfied beyond a reasonable doubt that the defendant intended to aid and comfort the enemies of the United States the defendant must be found not guilty. If you believe the defendant's intention in doing what he did during the period from June 17, 1942, to and including July 17, 1942, was not in any way to injure the United States but merely to assist his son, Herbert Haupt, as an individual, as distinguished from assisting him in his purposes, if such existed, of aiding the German Reich, or of injurying the United States, the defendant must be found not guilty.

Petitioner's objections to the charge on intent (Pet. 64–73) are thus without merit. They pro-

ceed on the basic misconception that a son can never be an enemy agent. And as for petitioner's contention that the definition in the Illinois statute of an accessory after the fact has some bearing on the issue of intent (Pet. 45–46), it is of course perfectly obvious, as the court below held (R. 918–919), that no state law can affect the elements of a crime defined, not only by federal statute, but by the Constitution itself.

II. ALL THE OVERT ACTS SUBMITTED TO THE JURY WERE SUPPORTED BY THE TESTIMONY OF TWO WITNESSES WITHIN THE MEANING OF THE CONSTITUTION

The Constitution provides that "No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act"—"or on Confession in open Court", and there is no such confession here. The problem in this case, at the present juncture, is to determine the meaning of "Testimony of two Witnesses" insofar as it affects the sufficiency of the present proof—whether, for example, the overt act of sheltering has been proved by two witnesses when both see the enemy agent entering the front door of the apartment house, which is proved by other witnesses to lead only to three apartments, two of which the agent did not enter; when both see the lights in the defendant's apartment go on a few minutes later, that apartment having been previously dark; when both see the lights extinguished a short time later; and when both, the

next morning, see the enemy agent emerge from the front door, wearing clothing different from that which he wore when he entered the same door the previous night. Is there anything in the Constitution which imperatively requires a holding that in those circumstances the overt act of sheltering the enemy agent has not been proved by "the Testimony of two Witnesses to the same overt Act"?

In the resolution of that question, Mr. Justice Holmes' admonition in *Gompers* v. *United States*, 233 U. S. 604, 610, seems to us controlling—

> * * * the provisions of the Constitution are not mathematical formulas having their essence in their form; they are organic living institutions transplanted from English soil. Their significance is vital not formal; it is to be gathered not simply by taking the words and a dictionary, but by considering their origin and the line of their growth.

So we do not pause now to consider whether, as a matter of language, "Testimony" means "eye-witness testimony," nor whether it means "direct testimony"; nor to discuss whether, assuming the latter limitation, "direct testimony" excludes any sort of evidence which by common parlance might be classified as circumstantial. We propose to examine at the outset the origin of the constitutional provision and the lines of its growth, and to consider just precisely the kind of evidence which previously has been held to satisfy the two-

witness requirement. Not until then will we be in a position to appraise the sufficiency of the present proof or to evaluate the conclusion of the majority of the court below (R. 887–901), that all twelve of the overt acts submitted to the jury were proved by the testimony of two witnesses as required by the Constitution.

A. *The two-witness requirement in English treason cases was held satisfied by evidence which required interpretation; and the two witnesses were permitted to testify to different parts of the same overt act.*—After the two-witness rule in treason prosecutions had become embedded in the English law by the St. 7 Will. III, c. 3, the English Courts before the American Revolution regularly held that while evidence tending only inferentially to establish guilt was insufficient, other evidence which had a rationally direct tendency to establish the doing of the overt act alleged, so that only one result could follow, was deemed sufficient, notwithstanding that some process of reasoning and interpretation was necessary.

The history of the two-witness requirement is authoritatively traced in 7 Wigmore, *Evidence* (3d ed. 1940), § 2036; for present purposes we need only note his conclusion (p. 268) that "The ensuing legislation of William III, after the Revolution, established the law", and that "From the beginning of the 1700s there has never been any

doubt or vacillation upon the rule that two witnesses at least are required upon a charge of treason."

Section 2 of the definitive statute, St. 7 Will. III, c. 3, enacts that from and after March 25, 1696,

> * * * noe person or persons whatsoever shall bee indicted tryed or attainted of high treason whereby any corruption of blood may or shall bee made to any such offender or offenders or to any the heir or heirs of any such offender or offenders or of misprision of such treason but by and upon the oaths and testimony of two lawfull witnesses either both of them to the same overtact or one of them to one and another of them to another overtact of the same treason unlesse the party indicted and arraigned or tryed shall willingly without violence in open court confesse the same or shall stand mute or refuse to plead or in cases of high treason shall peremptorily challenge above the number of thirty five of the jury any law statute or usage to the contrary notwithstanding.

So far as an indictment for treason alleging but a single overt act is concerned, the quantitative requirement of the St. 7 Will. III is, of course, identical with that of our Constitution.

One of the first cases to apply the statute, *Trial of Robert Lowick*, 13 How. St. Tr. 267 (1696), presented squarely the problem of how direct the testimony of the required two witness had to be.

There the indictment charged as overt acts of compassing the king's death, a meeting on February 10 at which plans were laid for the murder of the king, and the procurement of men and equipment to perform the assassination (pp. 282–283). Only three witnesses testified. Of these, one Harris stated that he was sent to England from France with directions to take orders from Sir George Barcley; that on his arrival in England he was told of the plan to assassinate the king by persons other than the defendant; that subsequently, the defendant, in the course of a casual discussion of the plans, stated that he would obey orders, and at another time that he was furnishing two men, although he was receiving no compensation therefor (pp. 285–287). Another witness, Bertram, testified that the defendant asked him if he were willing to do as he was told without asking questions, and later told him that he believed the king was to be seized in his coach and gave him money to make preparations (pp. 289–294). The third witness, Fisher, testified that on the 8th of February, *i. e.*, before the plan to assassinate the king has been formed, the defendant stated that he would serve his master (the late king) faithfully (p. 294).

Sir Bartholomew Shower, for the prisoner, urged that this proof did not meet the statutory requirement (p. 297):

> * * * the whole of the evidence depends upon the testimony of Mr. Harris and Mr.

> Bertram; and we think they are not two witnesses to one thing, and what they say must be strained, and intended, and presumed, to make evidence of treason * * * and that Lowick after all said he would obey orders: now with submission, my lord, to make that to have relation to the assassination must be by a forced, strained intendment * * *

Lord Chief Justice Holt instructed the jury that while Fisher's testimony was circumstantial and bore only on the defendant's "inclination to the late king" (p. 305), still Harris and Bertram were sufficient witnesses if the jury found from their testimony that it clearly appeared that the defendant was a party to the plan to assassinate King William. Said Holt, L. C. J. (p. 306):

> * * * It is true, we are not to put in the case of a man's life, any forced and violent constructions upon any words or discourses; but if the evidence be plain and clear, though he did not say in express words, that he did design to assassinate or kill the king; yet, if upon the whole discourse that passed between them it appears plainly, clearly, and satisfactorily to you that he did consent and agree to this design, or was engaged in it, here is another witness, I say, to prove him guilty, besides Harris; you are to consider the whole evidence, the subject matter of discourse, and if you are satisfied, I say, that he was engaged in such a design by the proof of

> Bertram, as well as of Harris, then there are two witnesses, which is as much as the law requires.

Lowick's Case holds squarely, therefore, that the testimony of two witnesses is not rendered insufficient because it requires interpretation; all that is necessary is that the matter appear "plainly, clearly, and satisfactorily".

That the test of the sufficiency of the evidence is whether it has a direct, rational, and compelling tendency to establish facts, and not whether it is to be characterized as circumstantial in a technical sense, appears also from *Berwick's Case,* Foster, *Crown Law* 10; 18 How. St. Tr. 367 (1746). There the prisoner was charged with treason for levying war. The testimony of one witness that defendant was seen in the garb of a rebel officer acting as such with the rebel garrison was accepted as sufficient, whereas testimony that he was seen in the uniform of a rebel officer in town was objected to as insufficient and, it seems, rejected. Thereupon two other witnesses were called for the Crown, who testified that, after the surrender of the rebel garrison,

> they went to the Prison where the Officers were confined apart from the Common Men, and took * * * Account of them; that the Prisoner *Berwick* appeared among the Officers, and gave in his Name to them as Lieutenant in the *Manchester* Regiment.

Willes, L. C. J., and Abney, J., held (Foster's *Crown Law*, 11)

> that this Declaration of the Prisoner is not to be considered as a bare *Confession after* the Fact, but as an Evidence of the Fact itself, *viz.* that the Prisoner did appear and take the Rank of a Lieutenant in the Rebel Garrison.

At the time, Foster, J., "doubted whether this Declaration being made *after the Surrender*, can be considered in any other Light than as a Confession after the Fact." But 16 years later, when he published his *Crown Law*, the learned judge was of another opinion. He then said (pp. 243–244):

> I would not in any Thing I have said be understood to Arraign the Proceeding in the Case of *Berwick* before mentioned. He was found in a Prison assigned by the Duke after the Surrender, to the Officers in the Rebel Garrison, *and to none but Officers*, whither he went with the Rest of them. He appeared among them and took the Rank of an Officer. These Facts together with his Declarations, all proved by Two Witnesses, were I think very properly considered by Two Learned Judges not as a bare Confession after the Fact, but as an Evidence upon the Spot and in the very Scene of Action.

That is to say, from Berwick's presence in the officers' part of the prison after the surrender and

from his declaration at that time that he was a lieutenant in a rebel regiment, the jury was allowed to draw the inference—the compelled inference—that he had been in arms with the rebels.

Another case which clearly establishes that eyewitness testimony was not the only kind deemed sufficient to satisfy the St. 7 Will. III is *Rex* v. *Dr. Hensey,* 1 Burr. 642, 19 How. St. Tr. 1342, which was tried before Lord Mansfield in 1758. There the defendant was charged with sending intelligence to the enemy. Only one witness, the postman, was a direct witness to any act by the defendant; he testified that he received letters from the defendant for mailing (19 How. St. Tr. at 1369–1370). Other witnesses testified to finding letters in defendant's bureau at the time of his arrest (pp. 1356–1363), and to the fact that the letters delivered to the postmaster had been intercepted (pp. 1370–1373). Several witnesses who knew defendant's handwriting testified that the intercepted letters and those found in the bureau were in his handwriting (pp. 1365–1368). It is thus evident that the court considered a witness to handwriting sufficient to confirm the direct testimony of the postman to the mailing of the intercepted letters,[20] or accepted as proof of other overt

[20] And see the *Trial of De La Motte*, 21 How. St. Tr. 687, 809, where Buller, J., in 1781 charged a jury that, if the testimony of one witness was confirmed by a letter under the defendant's hand proved by another witness, there would be two sufficient witnesses.

acts the mere fact that incriminating letters in defendant's handwriting were found in his custody.[21]

All these cases, it seems to us, establish that the English courts applying the St. 7 Will. III did not require that evidence be direct in the sense that it be direct eye-witness proof which excluded all process of inference. The test was whether the evidence directly related to the overt act charged, and compelled the inference that that particular act had been committed. The English courts did not accept evidence which merely gave rise to an inference of guilt, but they did accept evidence which directly tended to establish that an act had been committed, even though such evidence might not be eye-witness evidence, or even though eye-witness evidence had to be interpreted in the light of the circumstances to which it related.

—B. *The debates in the Constitutional Convention show that the two-witness requirement was directed against prosecutions inspired by viru-*

[21] That the distinction between "direct" and "circumstantial" recognized by the English courts was a distinction between positive and inferential proof, rather than between eye-witness proof and proof of circumstances, is shown by the rulings on proof of handwriting. If papers were found on a defendant's person or in his custody, proof of similarity of handwriting was good proof (*Rex* v. *Dr. Hensey*, 1 Burr. at 644, 19 How. St. Tr. at 1342–1343), while mere proof of handwriting where letters were not found in the defendant's custody was insufficient (*Rex* v. *Crosby*, 12 How. St. Tr. 1291, 1298 (1695)).

lence and supported by perjury.—The St. 7 Will. III, c. 3, was not unknown to the American bar of 1787. Early colonial legislation had adopted its two-witness provisions, frequently by express reference.[22] It had been cited in American treason trials, in New York as early as 1702 [23] and in Pennsylvania during the Revolutionary War.[24] It was referred to by Blackstone [25] and Hawkins,[26] and formed the subject of Chapter III of Sir Michael Foster's *Discourse on High Treason,* contained in his *Crown Law;* all three works were well known to American lawyers.[27] And there is other convincing historical evidence that the American bar prior to 1787 was aware of the statute.[28] It is in consequence abundantly clear

[22] See Hurst, *Treason in the United States* (1944) 58 Harv. L. Rev. 226, 230–232, 244–245, 272.

[23] *Trial of Colonel Bayard*, 14 How. St. Tr. 471, 506.

[24] *Respublica* v. *Roberts*, 1 Dall. 39 (Pa. 1778); *Respublica* v. *McCarty*, 2 Dall. 86 (Pa. 1781).

[25] 4 Bl. Comm. *356–357.

[26] 2 *Pleas of the Crown* (4th ed. 1762) 257–259.

[27] Foster's *Crown Law* had been cited in the Pennsylvania treason trials of 1778, in which James Wilson, later a member of the Constitutional Convention, had been of counsel. *Respublica* v. *Malin*, 1 Dall. 33, 34; *Respublica* v. *Carlisle*, 1 Dall. 35, 36; *Respublica* v. *Roberts*, 1 Dall. 39, 40. And see the citations to Foster in *Respublica* v. *McCarty*, 2 Dall. 86 (Pa. 1781) and *Respublica* v. *Weidle*, 2 Dall. 88 (Pa. 1781) (misprision of treason). Hawkins had been cited in the *Malin* and *Roberts* cases.

[28] Jefferson referred to both the statute and Foster's treatise in 1778. See Hurst, *Treason in the United States* (1944) 58 Harv. L. Rev. 226, 252–253. James Wilson has already been mentioned above, note 27; see also Hurst, *supra*, at 247–248.

that both the draft provision as to two-witness proof submitted to the Convention as well as the requirement finally adopted had their origin, not in any "system of trial not rational in its processes at all,"[29] but in the familiar terms of the St. 7 Will. III which was the colonists' birthright, and whose provisions had been in and out of English law since 1547.[30]

As originally presented to the Convention on August 20, 1787, Article VII, Sec. 2, of the draft provided, in the respect now pertinent (2 Farrand, *Records of the Federal Convention*, 345):

> No person shall be convicted of treason, unless on the testimony of two witnesses.

The discussion covered this and other clauses of the draft; the first reference to the evidentiary requirements appears at page 346:

> Mr. Dickenson thought the addition of "giving aid & comfort" unnecessary & improper; being too vague and extending too far—He wished to know what was meant by the "testimony of two witnesses," whether they were to be witnesses to the same overt act or to different overt acts. He thought also that proof of an overt-act ought to be expressed as essential in the case.

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[29] *United States* v. *Robinson*, 259 Fed. 685, 691 (S. D. N. Y.).

[30] See 7 Wigmore, *Evidence*, § 2036, pp. 264–268. The first statutory two-witness provision was the St. 1 Edw. VI, c. 12, § 22.

> Doct Johnson considered "giving aid & comfort" as explanatory of "adhering" & that something should be inserted in the definition concerning overt-acts. * * *

Other discussion and three motions followed. Next (2 Farrand, 348)—

> It was then moved to insert after "two witnesses" the words "to the same overt act."
>
> Doct Franklin wished this amendment to take place—prosecutions for treason were generally virulent; and perjury too easily made use of against innocence.
>
> Mr. Wilson. Much may be said on both sides. Treason may sometimes be practiced in such a manner, as to render proof extremely difficult—as in a traitorous correspondence with an Enemy.

Without further reported discussion, the vote was taken and the amendment carried, by 8 States to 3.

The foregoing represents the sum-total of the reported discussion on the two-witness provision. As Dean Wigmore pointed out, *op. cit. supra*, § 2037 at p. 270, "the opportunity of detecting the falsity of the testimony, by sequestering the two witnesses * * * and exposing their variance in details, is wholly destroyed by permitting them to speak to different acts." Therein lies the real value of the change made by the Constitution in the provision taken from the St. 7 Will. III—although, in respect of indictments contain-

ing only a single overt act, the requirements of proof remained quite the same.

There is nothing in the debates about "direct" as against "circumstantial" testimony, and nothing indicating an intent to require that proof of the overt act be more direct than was required to establish the crime "plainly, clearly, and satisfactorily." Neither the English cases nor the English texts insisted on complete eye-witness accounts such as excluded even compelled inferences. And while a number of early colonial statutes had imposed a two-witness requirement for all capital offenses when the English law did not do so,[31] even the earliest laws of New Haven and Plymouth deemed the account of two witnesses sufficient "though they did not together see, nor heare, and so witnesse to the same individuall, any particular Act, in reference to those circumstances of time, and place."[32] There is no reason to believe, therefore, that when the Framers provided for the testimony of two witnesses to the same overt act, they intended to affect anything beyond the quantitative requirement.

Moreover, it should not be overlooked, in appraising the purpose of the two-witness require-

[31] See Hurst, *Treason in the United States* (1944) 58 Harv. L. Rev. 226, 243–244, quoting, *inter alia*, the New Haven Laws of 1656 and the Plymouth Laws of 1671.

[32] *Supra*, note 31. The Plymouth Laws added, "Provided the Bench and Jury be satisfied with such testimony."

ment in the light of Dr. Franklin's indorsement, that in 1787 and for nearly a hundred years thereafter, the defendant in a criminal trial was not a competent witness on his own behalf. See 2 Wigmore, *Evidence* (3d ed. 1940), § 579. The disqualification was not removed in federal criminal proceedings until 1878 (Act of March 16, 1878, c. 37, 20 Stat. 30, 28 U. S. C. 632), nor in the English courts generally until the Criminal Evidence Act in 1898, St. 61 & 62 Vict., c. 36. All that the accused had, in some jurisdictions, was the privilege of making an unsworn statement to the jury. 2 Wigmore, *op. cit.*, §.579, at p. 702. Consequently, the accused being unable to defend himself under oath, the two-witness rule protected him against virulent prosecutions supported by perjured testimony.

C. *The two-witness requirement in the Constitution is construed by the early American decisions precisely as that requirement was construed by the English courts before 1776.*—The Constitution, then, provides that "No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act." We have shown that the debates throw no light on whether the required testimony be circumstantial or direct or indeed on what would be the outside limits of either category. We submit, therefore, that the only proper standard for two-witness testimony is the one which had been established as a matter of English law prior to 1776 in cases

where the two-witness requirement was applicable. Such an approach is the one used by Chief Justice Marshall in the *Burr* case when he was required to ascertain the meaning of "levying War." He said (*United States* v. *Burr*, Fed. Case No. 14693, 25 Fed. Cas. at 159–160, 2 Robertson's Report, 402–403 (C. C. D. Va. 1807)):

> But the term is not for the first time applied to treason by the constitution of the United States. It is a technical term. It is used in a very old statute of that country whose language is our language, and whose laws form the substratum of our laws. It is scarcely conceivable that the term was not employed by the framers of our constitution in the sense which had been affixed to it by those from whom we borrowed it. So far as the meaning of any terms, particularly terms of art, is completely ascertained, those by whom they are employed must be considered as employing them in that ascertained meaning, unless the contrary be proved by the context. It is, therefore, reasonable to suppose, unless it be incompatible with other expressions of the constitution, that the term "levying war" is used in that instrument in the same sense in which it was understood in England, and in this country, to have been used in the statute of the 25th of Edw. III. from which it was borrowed. It is said that this meaning is to be collected only from adjudged cases. But this position cannot be conceded to the extent in which it is laid down. The superior

> authority of adjudged cases will never be controverted. But those celebrated elementary writers who have stated the principles of law, whose statements have received the common approbation of legal men, are not to be disregarded. Principles laid down by such writers as Coke, Hale, Foster, and Blackstone, are not lightly to be rejected. These books are in the hands of every student. Legal opinions are formed upon them; and those opinions are afterwards carried to the bar, the bench and the legislature. In the exposition of terms, therefore, used in instruments of the present day, the definitions and the dicta of those authors, if not contradicted by adjudications, and if compatible with the words of the statute, are entitled to respect.

Mr. Justice Iredell, presiding at the first trial of *Fries*, had earlier said substantially the same thing (*Case of Fries*, Fed. Case No. 5126, 9 Fed. Cas. at 911–912 (C. C. D. Pa., 1799):

> * * * When this constitution was made, it was in the power of those who formed it either to define treason or not, or, if they thought proper to do so, to do it in what manner they chose, in which they might have followed the example of the country whence their ancestors came, to which they were accustomed, and in which they were most experienced in their own several states, where the crime of levying war was denominated treason. I believe

this has been generally followed through the states: in some I know it has. This term of levying war is an English expression, borrowed from the statute of Edward III; but, notwithstanding this, the principal provisions respecting treason are taken from an act of the British parliament in the reign of William III, which is principally calculated to guard the independence of the court against the power of the crown, and the prisoner against his prosecutors. Now, I must confess, as these able and learned framers of our constitution borrowed the act, in terms, from the British statute alone, an authority with which they were familiar, that they certainly at least meant that the English authorities and definition of those terms should be much respected. Those gentlemen knew as well as any counsel at the bar, the danger of constructive treasons: they knew how to guard themselves against the bad times of English history, and were equally acquainted with the better and more modern decisions. Would it not have been natural for men so able, so wise, so cautious, of their liberties, had they entertained a doubt of their insufficiency, to have introduced some new guards, some new interpretations, and not to have left us in later times in the dark, exposed to so much danger as the gentlemen of the bar apprehend? Gentlemen who know anything of that country, know that arbitrary times have existed, and also that a number of decisions have taken

> place since that period. I do not believe that any judge since the revolution in England has ever considered that he was bound to follow every arbitrary example of the English courts, or the crown laws which had taken place in dark ages. * * *

Even more significant, perhaps, are the comments on the treason clause made by James Wilson, also a Justice of this Court. He was, as has been noted, a member of the Constitutional Convention; he may well have been the author and draftsman of the treason clause;[33] here is what he said about the constitutional definition of the offense in law lectures delivered in 1790 and 1791:

> * * * This single sentence comprehends our whole of national treason; and, as I mentioned before, is transcribed from a part of the statute of Edward the third. By those who proposed the national constitution, this was done, that, in a subject so essentially interesting to each and to all, not a single expression should be introduced, but such as could show in its favour, that it was recommended by the mature experience, and ascertained by the legal interpretation, of numerous revolving centuries.[34]

Wilson was a member of the Constitutional Convention, Marshall and Iredell were each members of the ratifying conventions in their respec-

[33] See, Hurst, *Treason in the United States* (1945) 58 Harv. L. Rev. at 404–406.

[34] 3 *Works of James Wilson* (1804) 99–100.

tive States; surely these judges are reliable guides to the proper construction of the Constitutional provision. It is significant that there is no expression by any judge whose adult life was contemporaneous with the adoption of the Constitution which suggests that the English interpretations of such of the antecedent statutory provisions as were carried into the fundamental law are to be rejected;[36] that the first expression to

[35] 1 Beveridge, *The Life of John Marshall* (1916) 357 *et seq.*, and see 3 Elliott's *Debates*, *passim*. For Iredell, see 9 *Dict. Am. Biog.* 492, and 4 Elliott's *Debates*, *passim*.

[36] Peters, D. J., *semble accord* with Marshall, Iredell, and Wilson in *Case of Fries*, *supra*, 9 Fed. Cas. at 909 (C. C. D. Pa. 1799). Livingston, J., who had been admitted to the bar in New York in 1783 (11 *Dict. Am. Biog.* 312–313) avoided the question in 1808 (a possible reaction to the then recent Chase impeachment, according to Hurst, *Treason in the United States* (1945) 58 Harv. L. Rev. 806, 812, n. 217). See *United States* v. *Hoxie*, 1 Paine 265, 270–271, Fed. Case No. 15407, 26 Fed. Cas. at 398 (C. C. D. Vt. 1808):

> In taking notice of precedents, set by British tribunals, the Court does not mean to give any opinion on their binding effect in the United States; or discuss a question which has been much agitated—whether, by the use of these terms, it was intended to adopt the technical meaning which they had already received in England: or whether, considering treason as a new offence against a newly created government, the constitution on this point was to be interpreted by itself, without reference to, or with the aid of any common law decisions whatever? These questions will be left unconsidered—a decision of them now not being thought material. For, if the Court does not greatly err, no construction in England, and certainly none in America, has yet carried this doctrine the length to which we are at present expected to go.

the contrary dates from 1861;[37] and that that is the only expression to the contrary until 1945. The other judicial utterances all echo the views of those who participated in the drafting and in the ratification of the Constitution.[38] And it would be difficult to maintain, we submit, that lawyers of today, a hundred and sixty years later, are better able to assert what the men of 1787 really had in mind than they themselves were, when, in 1790 and 1799 and 1807, they spoke upon the subject.[39]

Certain it is, in any event, that the first two American decisions on the nature of the required two-witness testimony, which date from 1795 and 1807—and they are the last ones on the point for

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[37] *Charge to Grand Jury*, 5 Blatchf. 549, 550, Fed. Case No. 18271, 30 Fed. Cas. at 1035 (C. C. S. D. N. Y.) (Nelson, J.).

[38] *Charge to Grand Jury*, 2 Wall. Jr. 134, 136, Fed. Case No. 18276, 30 Fed. Cas. at 1048 (C. C. E. D. Pa. 1851) (Kane, D. J.); *Charge to Grand Jury*, 2 Curt. 630, 633, Fed. Case No. 18269, 30 Fed. Cas. at 1025 (C. C. D. Mass. 1851) (Curtis, J.); *Charge to Grand Jury*, 1 Spr. 602, 603, Fed. Case No. 18273, 30 Fed. Cas. at 1039 (D. Mass. 1861) (Sprague, D. J.); *United States* v. *Greiner*, 4 Phila. 396, 399–400, 1 Cadw. Cas. 448, 453–454, Fed. Case No. 15262, 26 Fed. Cas. at 38 (E. D. Pa. 1861) (Cadwalader, D. J.); *United States* v. *Greathouse*, 4 Sawy. 457, 465–466, Fed. Case No. 15254, 26 Fed. Cas. at 21 (C. C. N. D. Calif. 1863) (Field, J.); *Druecker* v. *Salomon*, 21 Wis. 621, 626 (1867); *United States* v. *Cramer*, 137 F. 2d 888, 894 (C. C. A. 2, 1943). *Accord:* 2 Story, *Commentaries on the Constitution* (2d ed. 1851) 540.

[39] Compare Hurst, *Treason in the United States* (1945) 58 Harv. L. Rev. 806, 811–812; Hurst, *The Historic Background of the Treason Clause of the United States Constitution* (1945) 6 Fed. Bar Ass'n J. 305.

over a century, until 1919—those decisions in fact apply the standards developed by Holt and Foster and Lord Mansfield under the St. 7 Will. III. They support the conclusion that the necessity for some interpretation does not render the testimony insufficient under the constitutional requirement.

In *United States* v. *Mitchell*, 2 Dall. 348 (C. C. D. Pa.), one of the cases arising out of the Whisky Insurrection of 1794, the defendant was indicted for treason—levying war—by assembling at Couche's fort and then proceeding to set fire to General Neville's house. There were two witnesses to the fact that the defendant was at the fort, but only one to the fact that he was at the burning of the General's house, and one to the fact that he was seen marching to the house. Mr. Justice Paterson thought that the better view of the case was that the meeting at the fort and the burning of the house together constituted one overt act of treason, and that the whole act was sufficiently proved by the testimony that the defendant was at the fort and that one person saw him march from thence and another saw him at the conflagration at the house. He said, charging the jury (2 Dall. at 356):

> * * * It is said, that no act of treason was committed at Couche's Fort; and that however treasonable the proceedings at Gen. Neville's may have been, there are not two witnesses who prove that the prisoner

was there. Of the *overt* act of treason, there must, undoubtedly, be proof by two witnesses; and it is equally clear, that the intention and the act, the will and the deed, must concur; for a bare conspiracy is not treason. But let us consider the prisoner's conduct, in a regular and connected course. He is proved by a competent number of witnesses, to have been at Couche's Fort. At Couche's Fort, the conspiracy was formed, for attacking Gen. Neville's house; and the prisoner was actually passed on the march thither. Now, in Foster 213, the very act of marching is considered as carrying the traitorous intention into effect; and the jury (who will sometimes find the most positive testimony contradicted by circumstances which carry irresistible conviction to the mind) will consider how far this aids the doubtful language of the second witness, even as to the fact of the prisoner's being at Gen. Neville's house.

On the personal motives and conduct of the prisoner, it would be superfluous to make a particular commentary. He was armed, he was a volunteer, he was a party to the various consultations of the insurgents; and in every scene of the insurrection, from the assembly at Couche's Fort to the day prescribed for submission to the government, he makes a conspicuous appearance. His attendance, armed, at Braddock's field, would of itself amount to treason, if his design was treasonable.

> Upon the whole, whether the conspiracy at Couche's Fort may of itself be deemed treason; or, the conspiracy there, and the proceedings at Gen. Neville's house, are considered as one act (which is, perhaps, the true light to view the subject in), the prisoner must be pronounced guilty. * * *

In other words, Paterson, J., in effect adopted the rule that the two-witness requirement is satisfied if each witness testifies to complementary parts of a continuous act.

The next case, *Aaron Burr's* trial in 1807, Fed. Case No. 14693, does not differ from the foregoing save on its facts. It is true that Chief Justice Marshall said (25 Fed. Cas. at 176, 2 Robertson's Report 436), "No presumptive evidence, no facts from which presence may be conjectured or inferred will satisfy the Constitution and the law." But he was dealing with a situation where there was no proof at all of Burr's presence at the meeting which was charged as the overt act of treason. He had earlier noted (25 Fed. Cas. at 172, 2 Robertson's Report at 429), "There is not only no evidence that the accused was of the particular party which assembled on Blannerhassett's island; but the whole evidence shows he was not of that party." The *Mitchell* case he distinguished on its facts. The judge there, he pointed out (25 Fed. Cas. at 173, 2 Robertson's Report at 431),

> proceeded to consider the meeting at Couch's, the immediate marching to Neville's house, and the attack and burning of the house, as one transaction. Mitchell was proved by more than two positive witnesses to have been in that transaction, to have taken an active part in it; and the judge declared it to be unnecessary that all should have seen him at the same time and place.

If the proof in the *Burr* case had been the same as in the *Mitchell* case, then, said the Chief Justice, "the decision would have been the same."

Consequently, *United States* v. *Burr* is not authority for the proposition that no circumstantial evidence satisfies the constitutional requirement, nor, certainly, for a rule that the testimony of witnesses to different parts of the same overt act cannot be tacked. It holds only that a man cannot be made constructively present at the scene of an overt act when he is shown not to have been actually present. It rejects circumstantial evidence in the sense of conjectural evidence, but it approves the *Mitchell* case which permits normal and compelling inferences to be drawn from the corroborating evidence of several witnesses. For the rule of the *Mitchell* case, while it required the jury to infer from two-witness testimony of being at the fort, and one-witness testimony of being on the marsh, and one-witness testimony of being at the fire, the

conclusion that Mitchell was present throughout—which is what we mean by a compelled inference—still protected the defendant from a prosecution inspired by virulence and supported by perjury. To revert to the language of Holt, L. C. J., the matter appeared "plainly, clearly, and satisfactorily."

For 112 years there is no American treason case dealing with the two-witness requirement. Then, in 1919, come two decisions from the same district which follow each other in the same volume of the reports.

In the first, *United States* v. *Fricke*, 259 Fed. 673 (S. D. N. Y.), the problem was the familiar one of the *Mitchell* case, whether the testimony of each of two witnesses who testified to complementary parts of a continuous transaction satisfied the constitutional requirement. Judge Mayer held that it did, saying (259 Fed. at 677):

> Where the overt act is single, continuous, and composite, made up of, or proved by, several circumstances, and passing through several stages, it is not necessary in order to satisfy the provisions of the Constitution requiring two witnesses to an overt act, that there should be two witnesses to each circumstance at each stage, as distinguished from the necessary proof of two witnesses to an act other than continuous and composite.

> That means this: If one of the overt acts, we will say, was as in this case the sending of a telephone message, and you have the testimony of the telephone operator who received the message for transmission, and the testimony of the person to whom the message was transmitted, there are the stages of one transaction proved by two witnesses, as the one witness was at one end of the telephone and the other witness at another.

The other case, *United States* v. *Robinson*, 259 Fed. 685 (S. D. N. Y.), dealt largely with other matters. Insofar as it requires that the overt act in treason itself manifest the treasonable intent; it is of course not law. *Cramer* v. *United States*, 325 U. S. 1, 34–35. Its analysis of the history and rationale of the two-witness requirement is, at the very least, unconvincing.[40] And it badly mis-cites the authorities relied on for the proposition that it has "always been necessary to produce direct, and not enough to produce circumstantial, proof", 259 Fed. at 691, relying on *Rex* v. *Lowick*, 13 How. St. Tr. 267, 305, and *Burr's Case*, 25 Fed. Cas. 55, 176.

The page citation to the *Trial of Lowick* is to that portion of Lord Holt's charge which dismisses Fisher's testimony as circumstantial. See

[40] See the comments on *United States* v. *Robinson* of perhaps the most thoroughly informed American scholar on the subject of treason. Hurst, *Treason in the United States* (1945) 58 Harv. L. Rev. 806 at 837, n. 293, and at 845, n. 316.

p. 62, *supra*. There is not the slightest awareness in the *Robinson* opinion of the compelled-inference versus eye-witness problem which was raised by Sir B. Shower for the defense and disposed of by Lord Holt's charge. See *supra*, pp. 61–63. And the reference to *Burr*'s case is to the quotation about presumptive evidence, *supra*, p. 80, with no mention or even indication of Chief Justice Marshall's discussion and approval of the *Mitchell* decision, although the *Mitchell* case is discussed later on in the opinion, 259 Fed. at 693.

In the *Robinson* case, Judge Hand was dealing with a situation where only one witness testified to the purpose which gave the color of treason to overt acts which were not in themselves acts of aid and comfort to the enemy, and where the other evidence tending to show the character of the overt acts consisted of separate circumstances not directly related to the overt acts charged. There the overt act which was deemed sufficient, the third overt act of the third count (259 Fed. at 686 and 690), charged that the defendant embarked from Rotterdam for New York carrying messages to agents of the German Government. The act of sailing was directly proved by two witnesses, but only one witness testified to the purpose of the sailing. The other evidence relied upon to show the purpose was the fact that the defendant kept himself in hiding and that he received letters from Europe in code. It was on these facts that Judge Hand concluded (259 Fed. at 694):

> * * * it is necessary to produce two direct witnesses to the whole overt act. It may be possible to piece bits together of the overt act, but, if so, each bit must have the support of two oaths; on that I say nothing. In the case of none of the overt acts at bar was the necessary evidence produced. The gravamen of the charge depended for direct support on Victorica alone. For the rest, the case rested upon circumstantial evidence, which, while well-nigh conclusive in fact, was not direct as required.

It is to be noted that none of the circumstances testified to by the witnesses in the *Robinson* case related directly to the doing of the particular overt act charged, and, while the collection of circumstances tended strongly to show a generally guilty intent, they did not tend specifically to show that the defendant was in fact carrying messages when he took the trip charged as an overt act. The *Robinson* case did not discuss the type of evidence involved in the cases of *Mitchell* and *Fricke*. It did not reject as insufficient, for instance, evidence that the defendant had the messages when he boarded the vessel and evidence that the messages were in his luggage when he reached his destination.

Apart from the circumstances that *United States* v. *Robinson* did not deal with the kind of evidence here in question, evidence which directly tended to establish the *doing* of an overt act, the case is the only reasoned decision which even ap-

pears to be contrary to our position here.[41] And, apart from the circumstance that it is not law as to the substantive aspects of treason[42] and is of doubtful authority on the history of the offense,[43] its treatment of the earlier authorities as to the evidentiary requirement militates against accord-

[41] Insofar as *Stephan* v. *United States*, 133 F. 2d 87 (C. C. A. 6), certiorari denied, 318 U. S. 781, rehearing denied, 319 U. S. 783, application for allowance of direct appeal denied, 319 U. S. 423, considers questions relating to the sufficiency of the evidence to support the overt acts there involved (133 F. 2d at 92–94), the decision either follows the *Robinson* case without further study or analysis, or else deals with overt acts which are clearly unsupported by two-witness testimony on any theory.

We do not stop to consider the possible application of all the language of the *Cramer* opinion, since the precise problem now involved here was not there considered. See pp. 95–96, *infra*. As this Court has frequently said, see *Cohens* v. *Virginia*, 6 Wheat. 264, 399; *Humphrey's Executor* v. *United States*, 295 U. S. 602, 626–627; and, most recently, *Armour & Co.* v. *Wantock*, 323 U. S. 126, 132–133, the language of its opinions is to be read in the light of the facts of the case under discussion.

[42] Because it required that the overt act in treason itself manifest the treasonable intent. *Contra: Cramer* v. *United States*, 325 U. S. at 34–35.

[43] The weakest aspect of Judge Hand's historical discussion is the circumstance that, in seeking the meaning of what was written by the Constitutional Convention in 1787, he explores the intricacies of the canon law. Even so, he overlooks that the canon law held the two-witness requirement to be met when two or more persons testified to different acts which were coherent parts of the whole, either by complementing each other or by tending to establish the same fact.

Dr. Stephan G. Kuttner, Professor of the History of Canon Law, The Catholic University of America, and Honorary Consultant in Canon Law, Library of Congress, in

ing it the weight which would otherwise attach its author's judicial utterances. For the learning of *Rex* v. *Lowick* and *Burr's Case* is the precise opposite of what Judge Hand ascribes to them: they hold that evidence which though requiring interpretation conclusively and compellingly points to the doing of the act charged, i. e., "circumstantial" evidence which is in fact well-nigh conclusive, fully satisfies the two-witness requirement. *Rex* v. *Lowick* rejects inconclusive conjecture; *Burr's Case* rejects assumptions which the other evidence affirmatively disproved.

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his paper, *The Two-Witness Requirement in Canon Law*, says (Appendix to U. S. Brief in the *Cramer* case, pp. 42–43):

> * * * A "cumulative" difference is had where two or more persons testify to different acts *which are coherent parts or phases of a whole*, by complementing each other or by tending towards the same end. E. g., witness I has seen the defendant loading a gun and aiming, witness II has heard the detonation of the shot: both together may sufficiently prove the act of shooting. Or witness I has seen the plaintiff plowing a field, witness II has seen him sowing some days later, witness III has seen him still later reaping the harvest: this may be sufficient evidence that the plaintiff was in bodily possession of the field. In other words, several "singular" witnesses in the case of a merely "cumulative" difference are considered by Canon law as sufficiently complying with the two-witnesses rule, except where any factual or logical link in the chain of their observations is missing. (See Schmalzgrueber, *Jus ecclesiasticum*, book II, part III, title 21, §§ 105–6; Cardinal M. Lega, *De iudiciis ecclesiasticis*, vol. I, no. 481; but for cautious application of the doctrine in criminal cases, *id.* vol. IV, num. 222.)

Neither rejects evidence having a direct and rational relationship to the fact being proved. And neither requires complete eye-witness testimony by two witnesses to every element of the overt act.

D. *The testimony supporting the overt acts here fully meets the constitutional requirement.*—Having reviewed the terms of Constitutional provision in the light of "their origin and the line of their growth", we are now ready to examine the conclusion of the court below (R. 887–901) that all twelve of the overt acts submitted to the jury were proved by the testimony of two witnesses as the Constitution requires.

(1) *Overt acts 10 and 11—assisting Herbert to obtain employment.*—As we have shown in the Statement, *supra*, pp. 10–13, at least two witnesses testified to the fact that petitioner, with Herbert, called upon Grunau and Koch, respectively; and that Herbert, in petitioner's presence, asked each of these men for employment in the Simpson Optical Company and gave a false account of his absence from the United States. Petitioner's attack on the sufficiency of the evidence to establish these two overt acts is not really based on any failure to meet the two-witness requirement, but on his contention (Pet. 31) that his presence did not constitute assistance to Herbert. However, as we have pointed out above in some detail, see pp. 49–52, petitioner's presence at these interviews was in fact an act of direct assistance to Herbert.

(2) *Overt acts 13–16—the arrangements for and purchase of the automobile for Herbert.*—Petitioner does not deny that there was testimony of two witnesses that he accompanied Herbert to the agency on June 23 (overt act 13; see Statement, *supra*, p. 20), or to the fact that he made the purchase arrangements and the initial payment on June 23 (overt act 14; *supra*, p. 21), or to the fact that he accompanied Herbert to the Motor Sales Agency on July 24 (overt act 15, *supra*, p. 21). He does challenge the sufficiency of the evidence to establish by two witnesses the fact that he actually made the final payment on the car (overt act 16; Pet. 29–30).

Farrell, the sales agent, testified that, on the evening of June 24, petitioner came to the agency, with Herbert, that petitioner paid $405 on the purchase price in cash (including three fifty-dollar bills), signed a note for the balance due, and executed the usual finance contract (R. 306–309). Vinson, the manager of the agency, testified that he saw petitioner and Herbert come in that evening, and that he received the money and the note signed by petitioner (R. 315–316). Vinson's itemization of the currency which he received that evening corresponded with Farrell's testimony as to the denomination of the currency he had received from petitioner; both agreed that it was in fives, tens, and twenties, with three fifty-dollar bills (R. 306, 316).

This, we submit, is direct testimony by two witnesses that petitioner completed the purchase of the automobile as alleged. The matter appears "plainly, clearly, and satisfactorily." As we have shown, American decisions by judges who were participants in the ratification of the Constitution make it clear that the requirement that there be two witnesses to the same overt act does not mean that the two witnesses must observe any particular action at exactly the same point at exactly the same time. *United States* v. *Mitchell*, 2 Dall. 348; *United States* v. *Burr*, Fed. Case No. 14693, both *supra*. Here the fact to be proved was that petitioner completed the purchase of the automobile. Farrell's testimony that petitioner signed the note and handed over currency of particular denominations, and Vinson's testimony that he saw petitioner at the agency and received both the note and the money, which was in bills of precisely the same denomination, directly tended to establish that fact. Insofar as mental processes contribute to the conclusion, they are inferences which compel that result. No other inferences are possible. There is no room whatever on this evidence for speculation or conjecture.

Petitioner also contends (Pet. 30) that Farrell was the only direct witness to the fact that the car was purchased for Herbert. But this contention overlooks the testimony of the witness Robe, an F. B. I. agent, that he observed peti-

tioner and Herbert drive to the motor agency in petitioner's automobile, a Plymouth; that he "saw Herbert Haupt leave the Warner Motor Sales, driving the 1941 Pontiac coupe," which had just been purchased, (R. 449), and that he observed Herbert driving to and from specified places in the Pontiac during the few days prior to his arrest (R. 449–451). Another F. B. I. agent, Berg, also saw Herbert drive the Pontiac on several days prior to his arrest (R. 457–458). This evidence that Herbert assumed dominion over the Pontiac automobile immediately upon completion of the purchase, and that he had this car until he was apprehended, sufficiently shows, together with Farrell's testimony, that the automobile was acquired for Herbert.

None of the reasons advanced for the adoption of the two-witness rule, whether in the common law, the canon law, or the Constitution itself, militates against reliance on different witnesses in support of different parts of complex overt acts, just so long as each material part of the act is proved by two witnesses. In view of the ruling in the *Cramer* case that an overt act of treason must itself be an act of aid and comfort, it is evident that an act sufficient to meet that test will frequently be a complex one, and will require more than two single witnesses to establish all its elements. But, having regard to the purpose of the Constitutional restriction—"prosecutions for treason were generally virulent; and perjury

too easily made use of against innocence"—it is obvious that the possibility of conviction on perjured testimony is far less when the prosecution is required to rely on three or four witnesses in order to establish a single overt act rather than just on two.

(3) *Overt acts 12, 17, 20–23—harboring and sheltering Herbert.*—Petitioner does not challenge the sufficiency of the evidence to establish overt act 17, which charged that he harbored and sheltered Herbert on June 23, 1942. As to the day there was, in addition to the testimony of the F. B. I. agents who saw Herbert going in and out of the building, sometimes alone and sometimes with his mother or petitioner, the testimony of two witnesses—Zermer and Mrs. Saure (then Miss Melind)—who were actually in petitioner's apartment and observed Herbert there with petitioner. See p. 17, *supra*. Petitioner contends however (Pet. 25–28), that the other overt acts, of harboring and sheltering Herbert on other days, were not proved by direct evidence as required, since on no other occasion did any witnesses actually see Herbert in petitioner's apartment.

The proof as to the other days was as follows: By the direct testimony of two or more witnesses who lived in the building, it was established that petitioner and his wife lived in the third floor front apartment at 2234 N. Fremont Street,

Chicago, Illinois, and that the sole entrance to that apartment was through the front entrance to the building. These same witnesses testified that they lived in the only other two apartments which could be reached through the front door and that Herbert at no time resided in their apartments. See p. 14, *supra*. By direct testimony of two or more F. B. I. agents, it was established that on each of the days in question Herbert on numerous occasions entered and left the building; that when he entered late in the evening, the lights in the third floor front apartment were extinguished within a few minutes and that he did not leave the building until the following day; that he always returned to the building at the close of the day; that on several occasions Herbert entered the building wearing described clothing and that when he thereafter left the building, he was wearing other clothing; that on numerous specified occasions Herbert entered and left the building in company with both or one of his parents; and that on specified occasions Herbert accompanied petitioner and Mrs. Haupt from the Haupt home to the homes of their friends. See *supra*, pp. 14–20.

Thus there was, throughout, direct observation by two witnesses of petitioner and of the enemy whom he was accused of aiding, at the time and at the location at which aid is alleged to have been given. There was also direct testimony by

two witnesses as to the physical surroundings in which petitioner and the enemy whom he aided moved. All the evidence directly related to the act in question. There was here no attempt to prove simply a number of separate circumstances, in themselves unrelated either to the time or place of the act charged, from which it was sought to infer the doing of the act. Here the competent facts, each directly observed by two witnesses, leave nothing to conjecture, and compellingly and inescapably establish that petitioner was harboring Herbert at the time and place the observations were made. This, we submit, fully satisfies the constitutional requirement that "No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act." *United States v. Mitchell*, 2 Dall. 348; *United States* v. *Burr*, Fed. Case No. 14693, both *supra*.

The trial judge went at least as far as the Constitution required when he charged the jury that an overt act must be proved by the testimony of "two direct witnesses" (Instructions Nos. 43, 44, 48, 49, and 50; R. 36, 39). He specifically told the jury that overt acts not proved by two witnesses could not be made the basis of a conviction even if the jury believed beyond a reasonable doubt that such acts were performed (No. 49, R. 39). He rejected petitioner's requests for a definition of witnesses as persons who "actually saw the commission of the particular overt act"

(D–1 and D–2, R. 726; Pet. 77–78)." We submit that his instructions were entirely correct.

The *Cramer* case, of course, dealt with an entirely different kind of situation. There the overt act of meeting with an enemy agent, proved by two witnesses, was held insufficient to establish that the act of meeting gave aid and comfort to the enemy. The basis of the ruling as to the requirement of direct testimony was that, in order to show the aid-and-comfort character of the overt act, two witnesses to that character were also necessary. It was in that connection that the Court said (325 U. S. at 34–35), "Every act, movement, deed, and word of the defendant charged to constitute treason must be supported by the testimony of two witnesses." It was in the same connection that the Court said (325 U. S. at 38), "* * * the whole purpose of the constitutional provision is to make sure that treason conviction shall rest on direct proof of two witnesses and not on even a little imagination. And without the use of some imagination it is difficult to perceive any advantage which this

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" See the colloquy between court and counsel (R. 688):

"The COURT. I have said there must be two direct witnesses to the same act.

"Mr. BERTRAM. Is there anything wrong or objectionable about putting in who actually saw the actual commission?

"The COURT. That is something more than the statute requires. I have said direct witnesses. I have limited the language with the word 'direct' so I will leave that there."

meeting afforded to Thiel and Kerling as enemies or how it strengthened Germany or weakened the United States in any way whatever." All the discussion related to the *quality* of the overt acts as acts of aid and comfort, not to the sufficiency of the two-witness proof relied upon to establish the *doing* of the acts. Hence the distinctions taken in the *Cramer* opinion between "direct" and "circumstantial" evidence must be read in the light of the very different facts there under discussion.

Here, on the other hand, not a whit of imagination is necessary to establish the doing of the acts charged; only one inference is possible from the evidence which has been adduced. Quite to the contrary, a very substantial amount of imagination is necessary to establish that petitioner did not shelter Herbert on the five days on which no witnesses were inside the apartment, or to prove that petitioner did not pay to Vinson the $405 which the latter turned over to Farrell.

Other instances of conclusive proof by the testimony of two "direct" witnesses who were not eye-witnesses can readily be supposed, examples where such observation conclusively establishes the fact in question. But we think there is no need either to extend the discussion or to conjure up situations additional to those actually under review. We repeat, here the facts, each directly observed by two witnesses, compellingly and inescapably establish, without any resort to conjecture or

speculation, that petitioner did each of the overt acts alleged.

This Court has had occasion to remark that the provision in the Philippine bill of rights "giving the accused the right to demand the nature and cause of the accusation against him does not fasten forever upon those islands the inability of the seventeenth century common law to understand or accept a pleading that did not exclude every misinterpretation capable of occurring to intelligence fired with a desire to pervert." *Paraiso* v. *United States,* 207 U. S. 368, 372. Similarly, a provision in the Constitution requiring "the Testimony of two Witnesses", which says nothing about "direct testimony", should not, through refinements on the concept of "direct testimony", be twisted to such a point that only witnesses who were in the accused's presence are competent to testify against him. Nothing in the two-witness requirement of the treason clause incorporates the tedious learning which disqualifies attesting witnesses to a will who are momentarily out of the testator's presence.[45]

There is nothing in the constitutional provision, and nothing in its origin or the line of its growth, which requires either that each witness be an eyewitness, or that each testify to every single element of the overt act charged so as wholly to ex-

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[45] E. g., *Hindmarsh* v. *Charlton,* 8 H. L. C. 160; *Goods of Colman,* 3 Curt. Eccl. 118; *Norton* v. *Bazett,* D. & Sw. 259.

clude all process of reasoning. It is sufficient that the testimony directly relate to the act charged at the time and place that act was committed. There is no necessity now to delimit the outer limits of what will constitute acceptable proof. Here the testimony left nothing to conjecture, and compelled the inference that the acts charged had been done.

To hold that the overt acts in this case were not proved by two witnesses as required by the Constitution would go far towards justifying the stricture that jurisprudence is the art of being methodically ignorant of what everyone knows, would do a lasting disservice to the administration of criminal justice, and would pervert the substance of a basic Constitutional guarantee into a ritualistic abracadabra wholly unrelated to its purpose.

III. EVEN IF SOME OF THE OVERT ACTS SHOULD BE DEEMED NOT TO HAVE BEEN PROVED BY TWO SUFFICIENT WITNESSES, THE JUDGMENT OF CONVICTION MUST STILL BE AFFIRMED

Even if the arguments made in the preceding point should be rejected, and it were held that some of the overt acts submitted to the jury were not proved by the kind of two-witness proof which is required, as for example on the standards applied, though without real support from the cases, by the dissenting judge below (R. 923–926), there are still enough undisputed overt acts left in this

case, in respect of proof by two witnesses, to require an affirmance of the conviction. This result follows both from the undisputed rule in treason cases generally as well as from the particular circumstances and posture of the present case. On either footing, there is no basis for setting aside the conviction because of the failure to establish the sufficiency of some of the overt acts which were submitted to the jury.

A. *As a matter of the substantive law of treason, one overt act, proved by the testimony of two witnesses, is sufficient (there being also present the requisite intent) to sustain a judgment of conviction, even though additional overt acts alleged in the indictment are not so proved.*— There can be no doubt that a person who, with intent to betray, commits a single act of aid and comfort to the enemy, and who is proved to have committed such act by the testimony of two sufficient witnesses, may properly be convicted of treason. This proposition is disputed neither by the petitioner nor by the dissenting judge below. We are therefore unable to appreciate the basis of their objections to Instructions 51 and 52 of the trial judge's charge (R. 39), in which the jury were told that petitioner was guilty if they found that, with intent to betray, he committed any one of the overt acts submitted for their consideration, and found also that such overt act had been proved by the testimony of two direct witnesses.

The elements of the crime of treason are not changed because the indictment alleges more than one overt act. And a person who is shown by proper proof to have committed one act of treason is not entitled to go free merely because he did not commit another act as well. As a matter of definition, treason is established by two-witness proof of any one overt act together with any sufficient proof of the requisite intent. It was therefore proper to instruct the jury that they could convict on a finding that one overt act had been established by two witnesses.

Such has always been the law, in an unbroken line of authority from the early English cases prior to 1776 down to the present day. For the convenience of the Court, we set forth the earlier decisions and text-writers' comments in detail.

Trial of the Regicides, 5 How. St. Tr. 947, 1033 (1660), *per* Sir Orlando Bridgman, L. C. B.:

> Then the first overt-act is their meeting, consulting, and proposing to put the king to death. The second is more open; namely, their sitting together, and assuming an authority to put the king to death. The third is sentencing the king. And I must tell you, that any one of these acts prove the indictment. If you find him guilty but of any one of them, either consulting, proposing, sitting, or sentencing (though there is full proof for all), yet notwithstanding you ought to find the indictment.

Trial of Robert Lowick, 13 How. St. Tr. 267, 277 (1696), *per* Sir John Holt, L. C. J.:

> Suppose you lay several overt-acts, and prove but one, yet he is to be found guilty of the high-treason, which is the imagining and compassing the death of the king, which is the crime laid in the indictment. * * *

Trial of Christopher Layer, 16 How. St. Tr. 94, 313–314 (1722), on motion in arrest of judgment:

> "*L. C. J.* [Sir John Pratt] You know, Mr. Hungerford, if but one overt act is well-laid and proved, it is sufficient.
>
> * * * * *
>
> "*Mr. Ketelbey.* * * * But, my lord, I must beg leave to take notice of what Mr. Attorney has observed relating to the five overt acts laid in the indictment, and submit to your lordship; for I don't know that it was ever determined otherwise, but that if one of the overt acts appears to be bad, judgment must be arrested.
>
> "*L. C. J.* Alas! quite the contrary: I believe you will find in Rookwood's trial, which you have in your hand: there it is said, if one overt act held, the indictment is good."[46]

[46] The ruling is actually in *Lowick's* trial, just quoted *supra*; *Rookwood's* case involved the admissibility of evidence of an overt act not laid in the indictment in order to prove the commission of another overt act which was so laid. See pp. 139–141, *infra*. But Lowick and Rookwood, though tried separately, were jointly indicted and, after conviction, were executed together. 13 How. St. Tr. at 308–310.

And see *ibid.*, pp. 314–315, for further discussion to the same effect.[47]

The English text-writers antedating the American Revolution are in consequence unanimous on the point. Hale says (1 *History of the Pleas of the Crown** 122):

> 3. That more overt-acts than one may be laid in an indictment, and then the proof of any of them so laid, being in law sufficient overt-acts, maintains the indictment.

Foster in his *Discourse on High Treason* states the rule as follows (*Crown Law*, 194):

> And if divers Overt-Acts are laid and but *one proved* it will be sufficient, and the Verdict must be for the Crown.

Hawkins (2 *Pleas of the Crown* (4th ed. 1762) 436) notes

> That where several Overt-Acts are laid in an Indictment of High Treason, the Proof of any of them maintains the Indictment as much as if every one of them were proved.

The earliest American decision is to the same effect. At the second trial of *Fries;* Fed. Case No. 5127 (C. C. D. Pa. 1800), the jury was instructed (9 Fed. Cas. at 932) that:

> If either of the three overt acts (or open deeds) stated in the indictment, is proved to

[47] See the same case, *sub nom. The King* v. *Layer*, 8 Mod. 82, 83: "And it was adjudged by THE COURT, that if but one overt act is well laid, judgment must pass against the defendant."

your satisfaction, THE COURT are of opinion, that it is sufficient to maintain the indictment; for THE COURT are of opinion that every overt act is treasonable.

Every modern American jury considering a case of treason has uniformly been charged to the same effect. *United States* v. *Fricke*, 259 Fed. 673, 677 (S. D. N. Y.); *United States* v. *Haupt*, 47 F. Supp. 836, 839 (N. D. Ill.), reversed on other grounds, 136 F. 2d 661 (C. C. A. 7); *Stephan* v. *United States*, 133 F. 2d 87, 92 (C. C. A. 6), certiorari denied, 318 U. S. 781, rehearing denied, 319 U. S. 783, application for allowance of direct appeal denied, 319 U. S. 423, see record in that case, No. 792, Oct. T. 1942, at pp. 326, 339–341; *Cramer* v. *United States*, 325 U. S. 1, see record in that case, No. 13, Oct. T. 1944, at pp. 442, 446. The propriety of such charges as definitions of the offense of treason has never been questioned.

Any other ruling would lead to absurd results. A defendant may be charged with five overt acts of treason, each of which is testified to by two different witnesses. In petitioner's view, if the jury should disbelieve any one of the 10 witnesses and thus find only four overt acts of treason, the defendant would be entitled to be acquitted and would thus be forever immune from punishment for his treachery. Clearly that is not the law. And it is significant that, in the *Stephan* case, the circuit court of appeals sustained the conviction

although it held that several of the overt acts were not supported by two witnesses. 133 F. 2d at 92–94. The *Stephan* case occupied the attention of this Court on four occasions, 318 U. S. 746; 318 U. S. 781; 319 U. S. 783; 319 U. S. 423; petitioner, therefore, is seeking a reversal for instructions under which Stephan went to and is staying in jail.

We believe that petitioner's contention on this point (Pet. 31–34, 64), and that of the dissenting judge below (R. 920–922, 927–929, 951–954), are the result of confusing the question of instructions to the jury as to the elements of the offense, with the principle of appellate action enunciated by this Court in the *Cramer* case, where it was said, in a footnote, citing *Stromberg* v. *California*, 283 U. S. 359, and *Williams* v. *North Carolina*, 317 U. S. 287, that the general verdict of the jury could be set aside "if any of the separable acts submitted was insufficient." 325 U. S. at 36, n. 45; and see *United States* v. *Cramer*, 137 F. (2d) 888, 893 (C. C. A. 2), the same case below.

We turn then, to an examination of that principle, first generally, in its relationship to accepted principles of appellate review in criminal cases; next in its application to the crime of treason; and finally as to its bearing on the particular situation here presented.

B. *Generally, in the criminal law, a verdict stands if a single overt act has been proved, even though the others may be bad.*—In ordinary criminal cases where numerous overt acts are alleged,

it has always been considered sufficient to support a verdict if, on appeal, a single overt act is shown to be supported by evidence. This is the consistent and unquestioned rule in conspiracy cases; every circuit in which the question has arisen has so held. *Gilson* v. *United States*, 258 Fed. 588, 590 (C. C. A. 2), certiorari denied, 251 U. S. 555; *Blaustein* v. *United States*, 44 F. 2d 163, 164 (C. C. A. 3), certiorari denied *sub nom. Sokol* v. *United States*, 283 U. S. 838; *Short* v. *United States*, 91 F. 2d 614, 618 (C. C. A. 4); *Tacon* v. *United States*, 270 Fed. 88, 89 (C. C. A. 5); *Burkhardt* v. *United States*, 13 F. 2d 841, 842 (C. C. A. 6); *Jung Quey* v. *United States*, 222 Fed. 766, 771 (C. C. A. 9); *Minner* v. *United States*, 57 F. 2d 506, 510 (C. C. A. 10); *United States* v. *Richards*, 149 Fed. 443, 455 (D. Neb.); *United States* v. *Orr*, 233 Fed. 717, 718 (D. R. I.).

Similarly, in mail fraud cases, it is sufficient on appeal if the evidence shows that the defendant devised a scheme to defraud by at least one of the means or representations alleged, regardless of how many others may have been set forth in the indictment. This rule is likewise unquestioned. *United States* v. *Dilliard*, 101 F. 2d 829, 833 (C. C. A. 2), certiorari denied, 306 U. S. 635; *Kaplan* v. *United States*, 18 F. 2d 939, 943 (C. C. A. 2); *Mathews* v. *United States*, 15 F. 2d 139, 144 (C. C. A. 8); *Simons* v. *United States*, 119 F. 2d 539, 549 (C. C. A. 9), certiorari denied, 314 U. S.

616; *Shreve* v. *United States*, 103 F. 2d 796, 813 (C. C. A. 9), certiorari denied, 308 U. S. 570; *Stephens* v. *United States*, 41 F. 2d 440, 446 (C. C. A. 9), certiorari denied *sub nom. Spicer* v. *United States*, 282 U. S. 880; *Havener* v. *United States*, 49 F. 2d 196, 199 (C. C. A. 10).

If it be objected that the quality of the overt act in conspiracy is different from that of the overt act in treason, as the latter was construed in the *Cramer* case, then the answer is that all the overt acts here in question meet the *Cramer* test. They were, as we have shown above, pp. 45–53, acts of aid and comfort to the enemy. That being so, there is no reason why a different rule of appellate review should be applied. And, as has been pointed out, the normal rule was applied on review of a conviction for treason, in *Stephan* v. *United States*, 133 F. 2d 87, 92–94 (C. C. A. 6), certiorari denied, 318 U. S. 781, rehearing denied, 319 U. S. 783, application for allowance of direct appeal denied, 319 U. S. 423; there the conviction was sustained notwithstanding the insufficiency, as a matter of two-witness proof, of four of the ten overt acts submitted to the jury. In other words, in treason as in conspiracy and mail fraud, the law does not speculate in favor of the convicted criminal simply because it is not possible to reconstruct the jury's mental processes. It is immaterial that the grounds on which they rested their verdict cannot be identified; the only inquiry on appeal is as to the sufficiency of the evidence.

Glasser v. *United States*, 315 U. S. 60, 80; *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, 254; *Burton* v. *United States*, 202 U. S. 344, 373. Since one overt act is sufficient for the commission of the offense, proof of one such act is sufficient to sustain a conviction.

A familiar analogy points in the same direction: When a defendant has been convicted on several counts of an indictment, and sentence not exceeding that permissible for a single count has followed, that sentence stands if supported by only a single good count, regardless of the infirmities of the others, and regardless of whether the trial judge would in fact have imposed that sentence had he known that some of the counts were bad. E. g., *Claassen* v. *United States*, 142 U. S. 140, 147; *Evans* v. *United States* (*No. 2*), 153 U. S. 608, 609; *Pinkerton* v. *United States*, No. 719, Oct. T. 1945, decided June 10, 1946. Here again, the law does not speculate in favor of the prisoner; "because, in the absence of anything in the record to show the contrary, the presumption of law is that the court awarded sentence on the good count only." *Claassen* v. *United States*, *supra*, 142 U. S. at 146–147.

Another analogy, though one somewhat farther removed, as we shall point out, is the case of a general verdict on an indictment containing several counts. In that situation it was well-settled, before the American Revolution, that, "if there is any one count to support the verdict, it shall stand

good, notwithstanding all the rest are bad." *Peake* v. *Oldham,* 1 Cowp. 275, 276 (1775); *Rex* v. *Benfield,* 2 Burr. 980, 985 (1760), both *per* Lord Mansfield, C. J. And that rule has always been followed in this Court; a general verdict of guilty, entered upon all the counts of an indictment, will stand if any of them is good. *Goode* v. *United States,* 159 U. S. 663, 669; *Powers* v. *United States,* 223 U. S. 303, 312; *Abrams* v. *United States,* 250 U. S. 616, 619; *Brooks* v. *United States,* 267 U. S. 432, 441. In each of these cases, the jury's verdict was simply "guilty as charged".[48] Consequently, viewed simply as a matter of lay psychology, the verdict, general in form, may well have rested, in the minds of the jurymen, at least in large measure on the counts later held bad or else not considered further on appeal. But the legal presumption and effect are otherwise.

Of course, the cases involving several counts of an indictment differ from cases involving several overt acts alleged in a single count. "Each count in an indictment is regarded as if it was a separate indictment." *Dunn* v. *United States,* 284 U. S. 390, 393. This means that the general verdict of guilty on a multi-count indictment is in legal effect a special verdict of guilty on each count, whereas here the general verdict was not the equivalent of a finding that each of the overt acts alleged

[48] *Goode*, No. 616, Oct. T. 1895, R. 6; *Powers*, No. 152, Oct. T. 1911, R. 4; *Abrams*, No. 316, Oct. T. 1919, R. 239–240; *Brooks*, No. 286, Oct. T. 1924, R. 10.

had in fact been committed and proved to have been committed by the testimony of two direct witnesses. Moreover, a jury trying a defendant on an indictment containing several counts is always instructed that it may specifically find him not guilty on particular counts, while here the jury was given no opportunity to find specially that a particular overt act had not been proved by the required two-witness testimony.

Even so, the analogy of the indictment with several counts is not as far-fetched as it might appear. Suppose that here the present indictment had been in twenty-nine counts, each alleging a single overt act, and twelve counts had gone to the jury, and the jury had returned, as it did, a general verdict of guilty.[*] In that event there could have been no doubt as to the sufficiency of the judgment of conviction simply because some of the counts were, on appeal, held unsupported by the required two-witness testimony. Each count, though containing only a single overt act, would have charged the crime of treason. Is the result to be different because the draftsman alleged all the overt acts in a single count? In actual substance that is precisely what petitioner urges.

At any rate, and regardless of whether the analogy of the multi-count indictment is accepted or not, the general principles of the criminal law, as exemplified in the conspiracy cases and the

[*] "We the jury find the Defendant, Hans Max Haupt guilty as charged in the indictment" (R. 846).

mail fraud cases, show that verdicts supported by substantial evidence must be sustained when any overt acts or essential means of committing the crime have been sufficiently proved, regardless of whether it is possible to identify the precise grounds on which the jury acted. The rule in cases of treason, as exemplified in *Stephan* v. *United States*, 133 F. 2d 87 (C. C. A. 6), certiorari denied, 318 U. S. 781, rehearing denied, 319 U. S. 783, application for allowance of direct appeal denied, 319 U. S. 423, and as expounded in treason cases for 183 years preceding the *Stephan* decision, show that those general principles are applicable also to the offense here in question. On either ground or both, even if some of the overt acts should now be held quantitatively deficient in proof, the judgment below must be sustained.

C. *Since special verdicts are not generally employed in criminal cases, a contrary rule would mean that a defendant could never be charged with more than one overt act of treason except at the risk of acquittal if a single additional overt act submitted to the jury failed of proof.*—The *Cramer* footnote points out that "The verdict in this case was a general one of guilty, without special findings as to the acts on which it rests." But special findings are not generally employed in criminal cases; special verdicts and interrogatories are usual only in civil litigation. Compare Rule 31, F. R. Crim. P., "Verdict," with Rule

49, F. R. Civ. P., "Special Verdicts and Interrogatories." Therefore the rule of the *Cramer* footnote, literally applied as the dissenting judge below thought it should be (R. 920–922, 926–930, 950–954), would mean that a defendant could never be charged with more than one overt act of treason except at the risk that his conviction would be reversed if a single additional overt act submitted to the jury should be held on appeal to be not supported by the requisite quantum of proof. That is to say, the more active the traitor and the more complex his treason, the better his chances of escaping the noose. Such a holding would, of course, completely overturn the hitherto settled rule in treason cases, *supra*, pp. 100–104, that one good overt act will support a verdict, and would either "make Men as safe in all Treasonable Practices as possible,"[50] or else require law enforcement officers and grand juries to draft and return voluminous indictments drawn on what would then be the only safe principle, viz., only one overt act per count.[51]

Actually, of course, there is no precedent for asking for special verdicts in cases where several overt acts are charged in an indictment. It

[50] Cf. Foster, *Crown Law*, 221.

[51] That such problems are not simply imaginary is indicated by the cases of persons who committed treason by broadcasting daily on the radio for the enemy, over a period of several years. How is a careful prosecutor to draft such an indictment if he cannot rely on the rule of the treason cases, *supra*, pp. 100–104?

certainly was never done in any treason case, where the rule was that one good overt act was enough. It has never been done in any conspiracy case, where the same rule obtains. And in the present case, petitioner's counsel expressed his satisfaction with the form of the general verdict submitted to the jury (R. 821).[52] And the instructions requested by petitioner (R. 725–732) did not include any suggestion that the jury should find specially the overt acts on which it relied.

Moreover, if special findings on the overt acts had been asked and received, and those findings had shown which of the overt acts were found by the jury to have been committed, the general verdict of guilty would still stand even if all but one of the overt acts thus specially found were held insufficient on appeal. That result follows from the rule in treason cases.

Apart from such speculation, however, we submit that petitioner's argument here, that the conviction fails if a single act is insufficient, really amounts to urging that this Court on appeal should invade the proper province of the jury.

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[52] See Instruction No. 66 (R. 43): "* * * You will also take with you two forms of verdict. One form of verdict reads, 'We, the jury, find the defendant, Hans Max Haupt, not guilty as charged in the indictment.' The other form of verdict reads, 'We the jury, find the defendant, Hans Max Haupt, guilty as charged in the indictment.' Having arrived at a verdict, you will use the first form if you find the defendant not guilty, and the second form if you find the defendant guilty. * * *"

All that is involved, as to the overt acts in this case, is a sufficiency of evidentiary proof. The jury were specifically told that an overt act must be proved beyond a reasonable doubt, *and* by two direct witnesses. They were further told that the submission to them, of any overt act, carried no suggestion that such overt act had in fact been committed. The trial judge's instructions on these points were most explicit (R. 36–39):

> 47. The Court is submitting to your consideration as possible acts of treason, the following alleged acts, charged in the indictment. [Specifying them in the language of the indictment].
>
> 48. By submitting the alleged overt acts above read to your consideration, however, this court does not mean to intimate or infer in any way, either its belief or disbelief that any alleged overt acts of treason have been committed by this defendant, or that any overt acts of treason have been proven by the required two witnesses. Under the law, you are the sole judge of the facts and you alone can determine the factual issues including the question of whether this defendant committed any act or acts of treason and whether any such act was proven beyond a reasonable doubt by two direct witnesses to the same overt act.
>
> 49. Since the law requires that there shall be no conviction of treason unless there are two direct witnesses to the same

> overt act, all the other alleged overt acts charged in this indictment are hereby withdrawn from your consideration as overt acts of treason, for even if you believe beyond a reasonable doubt they were performed, they may not in themselves be made the basis of a conviction under the Constitution. * * *[53]

These instructions were correct, and in connection with the other instructions on the two-witness requirement (Nos. 42–44, R. 35–36), properly left the question of the evidentiary sufficiency of the overt acts to the trier of the facts. The circumstances that this case involves a quantitative requirement of proof, and that that requirement is found in the Constitution, does not, we submit, substitute the court for a correctly instructed jury in the determination of whether the petitioner, in fact, committed the acts he was charged with doing.

D. *The only authorities apparently to the contrary involve situations where, by misdirection of the jury, the prosecution was predicated on an unconstitutional ground or statute.*—We have already noted that the footnote in the *Cramer* case, 325 U. S. at 36, n. 45, which states that "Since it is not possible to identify the grounds on which Cramer was convicted, the verdict must

[53] The remainder of Instruction No. 49 considers the bearing of the withdrawn overt acts on the question of intent, a matter discussed below, pp. 137–144.

be set aside if any of the separable acts submitted was insufficient," cites as supporting authority *Stromberg* v. *California,* 283 U. S. 359, 368, and *Williams* v. *North Carolina,* 317 U. S. 287, 292. We turn, accordingly, to an examination of those decisions.

Stromberg's conviction, as affirmed by the California District Court of Appeals, rested on a count which charged her with displaying a red flag, in violation of a state statute, (1) as a sign, symbol and emblem of opposition to organized government; and (2) as an invitation and stimulus to anarchistic action; and (3) as an aid to propaganda that is and was of a seditious character. 283 U. S. at 361. "The charge in the information, as to the purposes for which the flag was raised, was laid conjunctively, uniting the three purposes which the statute condemned. But in the instructions to the jury, the trial court followed the express terms of the statute and treated the described purposes disjunctively, holding that the appellant should be convicted if the flag was displayed for any one of the three purposes named." 283 U. S. at 363; and see 363-364 for the text of the charge. At the trial, moreover, the State's attorney had "emphatically urged upon the jury that they could convict the appellant under the first clause alone, without regard to the other clauses." 283 U. S. at 368.

Appellant, without questioning the charge as

such, challenged the constitutionality of the statute as a whole. Chief Justice Hughes said, therefore (283 U. S. at 364–365),

> As the trial court had treated the three purposes of the statute disjunctively, and the appellant had accepted that construction, we think that the only fair interpretation of her contention is that it related to the validity, not merely of the statute taken as a whole, but of each one of the three clauses separately relied upon by the State in order to obtain a conviction. Her concession as to the interpretation of the statute emphasizes, rather than destroys, that contention.

The Chief Justice, after indicating the views of the state appellate court, continued (283 U. S. at 367): "Having reached these conclusions as to the meaning of the three clauses of the statute, and doubting the constitutionality of the first clause, the state court rested its decision upon the remaining clauses. * * * Accordingly, disregarding the first clause of the statute, and upholding the other clauses, the conviction of the appellant was sustained." Then follows the passage relied on in the *Cramer* footnote (283 U. S. at 367–368):

> We are unable to agree with this disposition of the case. The verdict against the appellant was a general one. It did not specify the ground upon which it rested. As there were three purposes set forth in

the statute, and the jury were instructed that their verdict might be given with respect to any one of them, independently considered, it is impossible to say under which clause of the statute the conviction was obtained. If any one of these clauses, which the state court has held to be separable, was invalid, it cannot be determined upon this record that the appellant was not convicted under that clause. It may be added that this is far from being a merely academic proposition; as it appears, upon an examination of the original record filed with this Court, that the State's attorney upon the trial emphatically urged upon the jury that they could convict the appellant under the first clause alone, without regard to the other clauses. It follows that instead of its being permissible to hold, with the state court, that the verdict could be sustained if any one of the clauses of the statute were found to be valid, the necessary conclusion from the manner in which the case was sent to the jury is that, if any of the clauses in question is invalid under the Federal Constitution, the conviction cannot be upheld.

We believe, therefore, that the *Stromberg* decision is properly limited to its particular facts, to the circumstance that appellant was tried on one clause and that the conviction was affirmed on other clauses in the State court, and that it does not lay down any rule of general application at variance with accepted principles of criminal pleading and procedure.

In *Williams* v. *North Carolina*, 317 U. S. 287, petitioners were tried and convicted of bigamous cohabitation. They offered in their defense copies of the Nevada divorce proceedings which each had instituted, contending that the several divorce decrees and their own Nevada marriage were valid in North Carolina as well as in Nevada. The prosecution contended that the Nevada decrees were invalid because neither of the defendants in those actions was served with process in Nevada or had entered an appearance there. On this issue the trial court charged the jury that a Nevada divorce decree based on substituted service and where the defendant made no appearance would be invalid. The prosecution additionally urged that petitioners went to Nevada to obtain a divorce through fraud on the Nevada court and not with any intention of establishing a *bona fide* residence there. On that issue, the court charged that petitioners had the burden of satisfying the jury, though not beyond a reasonable doubt, of the *bona fides* of their Nevada residence.

On appeal, the Supreme Court of North Carolina affirmed the conviction, holding that North Carolina was not required to give the Nevada decree full faith and credit because of *Haddock* v. *Haddock*, 201 U. S. 562. It intimated that the decrees were collusive in any event, suggesting that the prosecution's second theory may have been an alternative ground for the judgment under *Bell* v. *Bell*, 181 U. S. 175.

This Court did not reach the latter issue. For one thing, North Carolina virtually conceded petitioners' Nevada domicile. Then follows the passage relied on in the *Cramer* footnote (317 U. S. 291–292):

> * * * In the second place, the verdict against petitioners was a general one. Hence, even though the doctrine of *Bell* v. *Bell, supra,* were to be deemed applicable here, we cannot determine on this record that petitioners were not convicted on the other theory on which the case was tried and submitted, *viz.* the invalidity of the Nevada decrees because of Nevada's lack of jurisdiction over the defendants in the divorce suits. That is to say, the verdict of the jury for all we know may have been rendered on that ground alone, since it did not specify the basis on which it rested. It therefore follows here as in *Stromberg* v. *California*, 283 U. S. 359, 368, that if one of the grounds for conviction is invalid under the Federal Constitution, the judgment cannot be sustained. No reason has been suggested why the rule of the *Stromberg* case is inapplicable here. Nor has any reason been advanced why the rule of the *Stromberg* case is not both appropriate and necessary for the protection of rights of the accused. To say that a general verdict of guilty should be upheld though we cannot know that it did not rest on the invalid constitutional ground on which the case was submitted to the jury, would be to

countenance a procedure which would cause a serious impairment of constitutional rights. Accordingly, we cannot avoid meeting the *Haddock* v. *Haddock* issue in this case by saying that the petitioners acquired no *bona fide* domicile in Nevada. If the case had been tried and submitted on that issue only, we would have quite a different problem, as *Bell* v. *Bell* indicates. We have no occasion to meet that issue now and we intimate no opinion on it.

The *Williams* decision may perhaps go beyond the *Stromberg* ruling; it is capable of being construed to hold that, where a prosecution is predicated on an unconstitutional ground, a verdict will not be upheld on appeal where it cannot be shown that the instructions to the jury were free of constitutional infirmity.

In any event, it seems clear on analysis of the *Stromberg* and *Williams* cases that they do not support the broad, generalized and unequivocal rule stated in the *Cramer* footnote. The justification for setting aside Cramer's conviction must rest, not on the ground that it "is not possible to identify the grounds on which Cramer was convicted," but in the circumstance that it appeared probable that he was found guilty on precisely those overt acts which this Court held insufficient, and not on the third overt act which the opinion of the Court did not consider. The case involved a misdirection, in that the jury were permitted to consider as overt acts of treason the meetings

which this Court held did not amount to such acts. That misdirection affected the result, for it is certainly very doubtful whether the jury would have found Cramer guilty of treason if the only overt act submitted to them had been the third one, which charged Cramer, after his own arrest, with concealing the identity of the saboteur Thiel by making a false statement to an F. B. I. agent.

In other words, the rule of the *Cramer* footnote and of the cases it cites is a rule of reason to be invoked for the protection of a defendant's constitutional rights. It is not an immutable absolute. It is not a rule which sets aside a verdict whenever the jury's reasoning cannot be classified or identified. It is a rule to be applied whenever there is, not merely a remote possibility, but a very real probability, that, by reason of misdirection, the verdict of the jury is based on the specific law or doctrine or overt act which this Court holds to be insufficient.

The *Cramer* footnote does not purport to question the rule of the conspiracy and mail fraud cases, that one overt act or one essential means properly proved sustains the verdict regardless of how many such acts or means are alleged in the indictment. Nor does the *Cramer* footnote purport to question or to alter the rule in treason that one good overt act similarly sustains the verdict regardless of insufficiency of proof as to the rest. For the Court's attention was not directed to the

latter rule. Examination of the voluminous briefs filed in the *Cramer* case both on argument and reargument, briefs aggregating over 700 pages, show that this point was not discussed, except for a single summary reference to what the circuit court of appeals had said on it below (Pet. I Br., No. 13, Oct. T. 1944, p. 18). We advert in the margin to the patent infirmities of that authority.[54]

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[54] *United States* v. *Cramer*, 137 F. 2d at 893: "If any one was insufficient to support a conviction, it was reversible error for the judge to submit it to the jury, unless he had required the jury to find separately as to each, as he did not." Citing, with a cf., *Nash* v. *United States*, 229 U. S. 373; *Gilson* v. *United States*, 258 Fed. 588 (C. C. A. 2), certiorari denied, 251 U. S. 555; and *Minner* v. *United States*, 57 F. 2d 506 (C. C. A. 10).

The *Nash* case involved a misdirection of the jury in a prosecution for conspiracy to restrain trade under the Sherman Act; it was held error to charge that a verdict might be permitted on any one of several methods employed by the defendants, as alleged in the indictment, when some of them would not warrant a finding of conspiracy; but it was held not necessary, in order to convict, to prove every means alleged. The *Minner* case holds, *inter alia*, that, in a prosecution to violate the Prohibition Act, it was error to submit overt acts done in furtherance of a different conspiracy. The *Minner* case also holds, 57 F. 2d at 510, as does the *Gilson* case, 258 Fed. at 590, the precise opposite of the proposition for which it is cited. See pp. 104–105, *supra*.

The circuit court of appeals in the *Cramer* case then went on to distinguish the usual rule in conspiracy cases, see *supra*, pp. 104–105, by differentiating the jury's determination of the evidentiary sufficiency of overt acts in conspiracy from a determination of the legal sufficiency of such acts in treason. No authorities were cited, and nothing offered beyond bare as-

The significant point in our view is that there is not only no support in the general authorities for the application of the rule of the *Cramer* footnote to a treason case such as this one, where the jury was properly instructed as to the elements of the crime, but that, on the contrary, the basic approach of the general authorities, the more particularized rule governing analogous offenses, and the oft-repeated and up to now unquestioned doctrine of the treason cases, are uniformly the other way.

E. *On the facts of the present case, it is wholly unreasonable to assume that the jury, consistently with its verdict and in view of the circumstance that the doing of the overt acts was not disputed, could have been misled by an insufficiency of proof as to any overt act.*—We have indicated why in our view the rule of the *Cramer* footnote cannot in terms be properly applied here. But conceding for purposes of argument that it is a rule of reason, and that it was properly applied on its own facts, on the view that a jury would be unlikely to find treason in a lie told to a law enforcement officer and soon thereafter retracted—such a

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sertion for the proposition that a jury in a treason case, under proper instructions as to the two-witness requirement, may not return a general verdict without specifying on which overt acts that verdict was rested, under pain of having the verdict set aside if any overt acts are later held deficient on appeal. The treason cases holding that one overt act is sufficient to support an indictment (*supra*, pp. 100–104), are neither cited nor discussed.

concession does not require reversal here, where the facts are so very different. Here it is clear that the jury, to convict at all, must have rested its verdict on the overt acts which either are not or else cannot be disputed.

The only conceivable challenge to the sufficiency of the overt acts submitted to the jury is as to the sufficiency of the proof to establish the overt acts of harboring on the days other than June 23. But actually, in substance, overt acts 12, 17, and 20–23 do not really charge separate overt acts of treason. They all charge a single act of aid and comfort: sheltering and harboring an enemy saboteur.

It would have been sufficient for the indictment to have charged that, on or about June 23, petitioner harbored and sheltered Herbert. It would also have been sufficient for the indictment to have alleged that petitioner harbored and sheltered Herbert on divers days between on or about June 22 and on or about June 27. Either alternative might have been better pleading as a matter of draftsmanship. If, on either variant, exactly the same testimony had been offered to support the allegation as was offered in support of the six separate overt acts—*viz.*, testimony of two witnesses who saw Herbert in the apartment, and testimony of the others as to the location of the Haupt apartment and as to petitioner's and Herbert's movements—we do not think it could be contended

for one moment that such overt act of harboring had not been sufficiently proved by two witnesses.

Is the result to be different because of the pleader's choice, because the draftsman of this particular indictment leaned to the side of over-cautiousness or over-particularity? Should the niceties of criminal pleading be a ground for finding error where none would otherwise exist? Here there is not even a remote possibility that the jury would have believed that petitioner harbored Herbert from the testimony of the F. B. I. agents watching the outside of petitioner's apartment, but would not believe the same thing from the testimony of the two witnesses who actually saw Herbert inside the apartment.

Hence we submit that even if, on the view of the dissenting judge below (R. 922–926)—a view which has but shaky support on the authorities—the evidence of harboring on days other than June 23 could in some manner be considered as evidence not satisfying the constitutional requirement of "Testimony of two Witnesses", it does not follow that the conviction must be reversed. Even in an age much more given to profitless technicalities than our own, the exact date on which an overt act of treason was committed was held not to be a matter of substance. *Mr. Townly's Case,* Foster, *Crown Law* 7, 8–9; *Lord Balmerino's Case,* Foster, *Crown Law,* 9 n.[55]

[55] The modern English law is to the same effect. See the count of the indictment on which the conviction was had in

The essence of the offense, as to these overt acts, was not harboring at any one particular time, but the act of harboring. That act was clearly proved by two witnesses.

The real issue at the trial, as we have already pointed out, was not as to the doing of the overt acts, but as to the intent with which they were done. The purchase of the automobile was conceded by counsel, and the sheltering of Herbert and the matter of assisting him to obtain employment were virtually admitted. See pp. 53–54, *supra*. The credibility of no single witness who

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Joyce v. *Director of Public Prosecutions*, [1946] A. C. 347, 348:

STATEMENT OF OFFENCE

High Treason by adhering to the King's enemies elsewhere than in the King's Realm, to wit, in the German Realm, contrary to the Treason Act, 1351.

PARTICULARS OF OFFENCE

William Joyce, on September 18, 1939, and on divers other days thereafter and between that day and July 2, 1940, being then—to wit on the several days—a person owing allegiance to our Lord the King, and whilst on the said several days an open and public war was being prosecuted and carried on by the German Realm and its subjects against our Lord the King and his subjects, then and on the said several days traitorously contriving and intending to aid and assist the said enemies of our Lord the King against our Lord the King and his subjects did traitorously adhere to and aid and comfort the said enemies in parts beyond the seas without the Realm of England, to wit, in the Realm of Germany by broadcasting to the subjects of our Lord the King propaganda on behalf of the said enemies of our Lord the King.

testified to the doing of the overt acts was even attempted to be impugned.[56] The testimony as to all the overt acts was so thoroughly linked together by the testimony of the F. B. I. agents that the jury, if it credited the agents' testimony at all, as it had to do in order to convict, was bound to find that all the overt acts had been committed. Consequently, on this basis also, the possible insufficiency of some of the harboring acts could not invalidate the conviction.

As we have pointed out at some length above, pp. 104–107, our contentions under these headings involve no departure from established principles; to the contrary. We urge here an adherence to the settled rules already discussed—the rule that a reviewing court in a criminal case will examine the evidence only to determine whether it is sufficient to support the verdict, and that, in other cases involving allegations of numerous means or overt acts, the appellate court's function ends when it finds that any overt act or essential means of committing the crime has been sufficiently proved. We have also shown how those rules were applied to a treason prosecution in *Ste-*

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[56] Zermer, who testified that he saw Herbert in petitioner's apartment on June 23, proved to be hostile to the Government and was cross-examined by the Government as a hostile witness. See *infra*, p. 152. But his bias in favor of petitioner hardly tends to weaken the weight of his testimony against petitioner.

phan v. *United States*, 133 F. 2d 87 (C. C. A. 6), certiorari denied, 318 U. S. 781, rehearing denied, 319 U. S. 783, application for allowance of direct appeal denied, 319 U. S. 423, where the conviction was affirmed although several of the overt acts submitted to the jury were found to be not supported by the testimony of two direct witnesses. While this result follows from the long-standing rule in treason prosecutions, it could also be justified on the ground that the factual situation in the *Stephan* case was similar to that presented here, in that there could be no reasonable or substantial probability that the jury based its verdict on the insufficient overt acts alone.

Stromberg v. *California*, 283 U. S. 359, and the cases applying the doctrine there laid down, including *Cramer* v. *United States*, 325 U. S. 1, are themselves a departure from the normal rule of appellate review in criminal cases, a departure occasioned, as we have shown, by the special facts those cases presented, by the very real probability that those verdicts were based on conduct held insufficient. Since there is no such probability here, there is no reason to apply the extraordinary rule of those cases. Here it is clear that the jury must have found that petitioner committed more than one legally sufficient overt act of treason properly proved by the direct testimony of two witnesses. Since any one of those acts, coupled with intent to betray, establishes the complete offense, petitioner's conviction must be affirmed.

A reversal in this case on the ground that any of the overt acts failed of proof would turn appellate review in criminal cases into an absorbing contest between the draftsman of the indictment and the ultimate appellate court, not on the issue of defendant's guilt, not on the issue whether he had a fair trial free from error, but rather on the insubstantial formalism of whether the indictment should have twenty-nine counts each containing one overt act, or whether it should consist instead of only one count alleging twenty-nine overt acts; of whether a continuing act is to be broken up into several overt acts, in the ratio of one such act for one calendar day, or whether it is preferably to be alleged as a single overt act over a space of several days. It is perhaps unnecessary to remark that such a disposition of this case would hardly be conducive to certainty in the administration of justice. It would serve neither to protect persons unjustly accused of what is still perhaps the most serious crime of all, nor would it shield the community against the evil machinations of the disaffected and the disloyal. But it would exalt form over substance far beyond even the refinements of the seventeenth century common law on this precise point. And it would also legislate into the law of treason a qualification which no English or American court prior to August 1943 ever found there, and one which the Founders most assuredly did not fashion.

IV. THERE WERE NO ERRORS IN THE ADMISSION OF EVIDENCE

A. *The evidence tending to show petitioner's treasonable intent was properly admitted.*—The trial court admitted, as bearing on the issue of intent, evidence of (1) pre-war statements by petitioner showing an intense devotion to Hitler and Nazi Germany; (2) one-witness testimony concerning overt acts alleged in the indictment but not submitted to the jury as overt acts of treason; and (3) extrajudicial admissions by petitioner. That intent is an element separate from the overt act which may be proved by any relevant evidence was reaffirmed by the *Cramer* decision. This Court there said (325 U. S. at 31):

> Bearing in mind that the constitutional requirement in effect is one of direct rather than circumstantial evidence, we must give it a reasonable effect in the light of its purpose both to preserve the offense and to protect citizens from its abuse. What is designed in the mind of an accused never is susceptible of proof by direct testimony. If we were to hold that the disloyal and treacherous intention must be proved by the direct testimony of two witnesses, it would be to hold that it is never provable. It seems obvious that adherence to the enemy, in the sense of a disloyal state of mind, cannot be, and is not required to be, proved by deposition of two witnesses.

Petitioner's challenge to the admissibility of all this evidence (Pet. 34–38) is also fully answered by the opinion of this Court in the *Cramer* decision, where it said, 325 U. S. at 33:

> It would be no contribution to certainty of judgment, which is the object of the provision, to construe it to deprive a trial court of the aid of testimony under the ordinary sanctions of verity, provided, of course, resort is not had to evidence of less than the constitutional standard to supply deficiencies in the constitutional measure of proof of overt acts. For it must be remembered that the constitutional provision establishes a minimum of proof of incriminating acts, without which there can be no conviction, but it is not otherwise a limitation on the evidence with which a jury may be persuaded that it ought to convict. * * *

1. The evidence of petitioner's pre-war statements is summarized in the Statement, *supra*, pp. 27–30. It consists of a few statements in 1936 and 1937 and others in the years immediately preceding the present war with Germany. The statements were not of general criticism of the United States or of refusal to buy war bonds, as in the *Cramer* case. They were statements showing adulation of Hitler and of Nazi Germany; statements respecting proposed fifth-column activities by German organizations to which petitioner belonged, in the event of a war between the United

States and Germany; and statements to the effect that, in such a war, petitioner would be loyal to Germany, would urge his son to serve in the German armed forces, would not permit him to serve in the American Army, and a statement that, if petitioner himself were taken into the Army, "he would crawl over the enemy lines and tell them our position" (R. 590).

At the time the testimony was admitted, the trial judge instructed the jury that the statements were restricted solely to the issue of intent (R. 500, 515, 587), and he so instructed the jury at the close of the case, carefully pointing out that petitioner's pre-war statements violated no law and were not in themselves any evidence of treason.[57]

As we have shown, intent was the only seriously contested issue of fact at the trial. Particularly in view of the father-son relationship between

[57] His instructions in this respect were as follows (R. 41):

> 58. There has been some testimony of certain statements purportedly made by the defendant prior to our declaration of war with Germany. Such statements of the defendant, if you believe they were made, are not grounds for charging the defendant with treason. The defendant, as well as others, had the right to his opinions and he had a right to express his opinions and to do anything lawful in keeping with those opinions and sympathies, but those statements, if you believe any were made, may be borne in mind by you in determining what his intent may have been after this country was at war with Germany, in committing, if you find beyond a reasonable doubt that he did so commit, any of the various overt acts charged in the indictment and

petitioner and the saboteur, the overt acts, although clearly acts of aid and comfort, would not necessarily carry incriminating implications of intent to betray. Such was petitioner's argument (R. 798–808). That element of the offense had to be established by evidence beyond the acts themselves. Because of this circumstance, any evidence having a logical tendency to show a disloyal state of mind was directly relevant to the fundamental issue in the case. That antecedent statements showing a disposition to adhere to the enemy have such logical relevance was recognized in both English and American treason trials. *Trial of Parkyns,* 13 How. St. Tr. 63, 90, 114 (1696); *Trial of Lowick,* 13 How. St. Tr. 267, 305

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submitted to your consideration by the court in these instructions.

59. No law of the United States is violated when a person in a general discussion expresses favorable or adverse opinions as to members of any race, color or creed, or regarding any nationality.

60. The Court has permitted the Government to introduce into evidence in this case certain alleged statements or utterances purportedly made by the defendant prior to the events forming the basis of the indictment in this case. Such statements or utterances, if you believe they were made by the defendant, do not constitute evidence of the commission either of the treason alleged or of the commission of any alleged overt act, but may be considered by you, if you credit them, solely in determining the intent or state of mind of the defendant in performing, if you find he did perform, any alleged overt act or acts of treason charged in the indictment to have been committed by him, and submitted to your consideration in these instructions.

(1696); *Respublica* v. *Malin,* 1 Dall. 33, 34 (Pa. 1778); *Respublica* v. *Roberts,* 1 Dall. 39 (Pa. 1778).

In the *Malin* case, the defendant, mistaking American troops for British, went over to them; and the prosecution offered statements made by him, to prove the mistake, and to prove his real intention of joining and adhering to the enemy. Over objection by defense counsel—James Wilson among them—the court admitted the testimony, saying (1 Dall. at 34):

> No evidence of words, relative to the mistake of the *American* troops, can be admitted; for any adherence to them, though contrary to the design of the party, cannot possibly come within the idea of treason. But, as it appears that the prisoner was actually with the enemy, at another time, words indicating his intention to join them are proper testimony, to explain the motives upon which that intention was afterwards carried into effect.

Similarly, in the *Roberts* case, the defendant was charged with treason in persuading others to enlist in the British army, and evidence was offered for the prosecution that the defendant had attempted to prevail upon the witness to enlist in the enemy forces, but that he did not succeed. Counsel for the prisoner—Ross and Wilson—argued that persuading implies success, and that there could be no treason under the act of assembly without an actual enlistment. The

Court accepted this contention in its substantive aspect, but added (1 Dall. at 39):

> The evidence offered, however, is proper to show *quo animo* the prisoner himself joined the British forces.

Testimony of antecedent statements has customarily been admitted as bearing on intent in other criminal cases in which the defendant's state of mind is of crucial significance.[58] Here the statements all bore on petitioner's loyalty and allegiance; and all of them followed a consistent pattern. As this Court but recently observed in a related case, "The fundamental question is whether the new citizen still takes his orders from, or owes his allegiance to, a foreign chancellory." *Knauer* v. *United States*, No. 510, Oct. T. 1945, decided June 10, 1946 (p. 4 of slip opinion). And the statements here admitted all tended to show, not a reservation of cultural feelings, not a

[58] *Williamson* v. *United States*, 207 U. S. 425; *Allis* v. *United States*, 155 U. S. 117, 119; *Wood* v. *United States*, 16 Pet. 342, 360–361; *Viereck* v. *United States*, 130 F. 2d 945, 959–960 (App. D. C.), reversed on other grounds, 318 U. S. 236; *United States* v. *Pelley*, 132 F. 2d 170, 180–181 (C. C. A. 7), certiorari denied, 318 U. S. 764; *Schoborg* v. *United States*, 264 Fed. 1, 7 (C. C. A. 6), certiorari denied, 253 U. S. 494; *Howenstine* v. *United States*, 263 Fed. 1, 5–6 (C. C. A. 9); *Stenzel* v. *United States*, 261 Fed. 161, 162 (C. C. A. 8); *Shidler* v. *United States*, 257 Fed. 620, 623 (C. C. A. 9); *Herman* v. *United States*, 257 Fed. 601, 603–604 (C. C. A. 9), certiorari denied, 251 U. S. 558; *Coldwell* v. *United States*, 256 Fed. 805, 811–812 (C. C. A. 1), certiorari denied, 250 U. S. 661; *Kirchner* v. *United States*, 255 Fed. 301, 304–305 (C. C. A. 4), certiorari dismissed, 250 U. S. 678.

criticism of policies and officials, but a reservation of loyalty; they showed that petitioner "had no feeling for the United States at all. His feelings were only for Germany" (R. 590–591).[59]

Clearly, a son in this country on a hostile mission would be more likely to reveal his plans to a father whose primary loyalty was to Germany than to one whose allegiance to the United States had never wavered. Moreover, a father so predisposed to the enemy would be more likely knowingly to aid that hostile mission. Evidence of petitioner's state of mind in the period immediately preceding the doing of the overt acts charged was important as showing that petitioner did more than help his son; that, as he himself later stated, he assisted Herbert because, "after all he was helping the fatherland" (R. 573).

Petitioner's contention that the evidence of his pre-war statements was prejudicial (Pet. 8, 34) is not well taken. That evidence was damaging, undoubtedly; it was not, however, improperly admitted. In a prosecution for murder, for instance, evidence that the defendant beat his wife and cheated at cards would be inadmissible, but evidence that he said he would kill the decedent if he ever met him would not be, though assuredly it

[59] Compare *Knauer* v. *United States*, *supra*, p. 10 of slip opinion: "And this case * * * is not complicated by the fact that when the alien took his oath Hitler was not in power. On April 13, 1937, Hitler was in full command. The evidence is most convincing that at that time, as well as later, Knauer's loyalty ran to him, not to this country."

would be damaging and highly incriminating. Here the evidence admitted against petitioner was of statements that, in the event of war, he would adhere to the enemies of the United States. Since that evidence had a direct bearing on the issue of intent, it was properly received.

2. Of the 29 overt acts charged in the indictment, 17 were not submitted to the jury because the prosecution was not satisfied that it had established those acts by the testimony of two witnesses (R. 660–661), and only 12 acts, which the judge felt "may or can be proven by the testimony of two witnesses" (R. 666) were submitted. Thereafter, the trial judge instructed the jury that, even if they believed the withdrawn acts had been committed, such acts in themselves could not be made the basis of a conviction under the Constitution, but that, if the jury believed that petitioner had actually performed any of such acts, such evidence could be considered on the question of intent (R. 39).[20]

[20] The text of the charge was as follows (R. 39):

49. Since the law requires that there shall be no conviction of treason unless there are two direct witnesses to the same overt act, all the other alleged overt acts charged in this indictment are hereby withdrawn from your consideration as overt acts of treason, for even if you believe beyond a reasonable doubt they were performed, they may not in themselves be made the basis of a conviction under the Constitution. However, if you believe beyond a reasonable doubt that the defendant did actually perform any of these other alleged overt acts

Petitioner's argument (Pet. 36–37) that it was error to permit the jury to consider evidence of withdrawn overt acts even on the issue of intent is predicated on a misinterpretation of the passage which he quotes from the *Cramer* opinion, 325 U. S. at 39, that "We cannot sustain a conviction for the acts submitted on the theory that, even if insufficient, some unsubmitted ones may be resorted to as proof of treason." This Court was there contrasting the insufficiency, as acts of aid and comfort to the enemy, of the overt acts submitted to the jury, with the treasonable character of the withdrawn acts. It held merely that the withdrawn acts could not be relied upon to supply a deficiency in the two-witness proof of the submitted overt acts. It did not hold that, where a legally sufficient overt act of treason has been properly proved, evidence of other treasonable acts becomes irrelevant; as we have shown, *supra*, pp. 130–131, it expressly held to the contrary.

Even under the St. 7 Will. III, c. 3, which provided that no evidence could be given of overt acts

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which were not proven to the degree required by the Constitution, you may consider any such act in determining the question of the intent with which the defendant may have performed, if you find beyond a reasonable doubt he did perform, any of the above alleged overt acts submitted to your consideration and not withdrawn, and which other possible overt acts, not withdrawn, you find from all of the evidence are proven beyond a reasonable doubt by two direct witnesses to the same overt act.

not expressly laid in the indictment,[81] it was early held that proof of overt acts not alleged was admissible if such evidence tended to prove the acts charged. *Trial of Rookwood*, 13 How. St. Tr. 139, 217–220 (1696); *Trial of Layer*, 16 How. St. Tr. 94, 220–223 (1722); *Mr. Deacon's case*, Foster, *Crown Law*, 9; 18 How. St. Tr. 366, 366–367 (1746); *Sir John Wedderburn's case*, Foster, *Crown Law*, 22; 18 How. St. Tr. 425, 427 (1746); see Foster, *Crown Law*, 245.

The *Trial of Rookwood, supra*, in 1696, is probably the leading case. There, the defendant was indicted for compassing the death of the King, and the overt acts alleged were a meeting with others to arrange for waylaying the King and attacking him in his coach, and an agreement to provide forty men for that purpose. When Holt, L. C. J., in summing up to the jury, mentioned that the defendant had produced a list of the men, the latter interrupted (13 How. St. Tr. at 217):

> *Rookwood.* That was not in the indictment.
>
> *L. C. J.* [*Holt*] But you were at that meeting, which is laid in the indictment.

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[81] "[VIII.] And bee it further enacted that noe evidence shall bee admitted or given of any overt act that is not expressly laid in the indictment against any person or persons whatsoever."

Compare Instruction No. 46 in the present case (R. 36): "One may not of course be convicted of treason upon evidence of an overt act, unless such act has been charged in the indictment."

Rookwood. My lord, that list is not in the indictment; the list in the indictment refers to Mr. Cranburne.

L. C. J. No, but that is evidence of your being in the design; I hope that list of men will be some evidence of the consent and agreement that Mr. Rookwood was to command a party.

Sir *B. Shower* [for the prisoner]. With submission, my lord, the words of the act seem otherwise, and that no overt-act should be given in evidence, that is not expressly alledged.

L. C. J. But cannot there be one act, that may be proof of another act which is alledged?

Sir *B. Shower.* Then there is no advantage of this law; for, my lord, the end of the act was, That they should know the particular crimes that they were to answer to. * * * The law says, Ye shall not give evidence of any overt-act that is not expressly mentioned.

L. C. J. It is not urged as an overt-act, but as evidence of an overt-act that is alledged; for instance, the overt-act alledged is, that they did meet and consult, shall not they give in evidence what was said and done at those meetings, though not alledged? Sir George Barcley produced a scheme at the Globe-tavern, shall not the producing of that scheme be given in evidence? If it may, why not the giving the list to Harris?

After further discussion, the Lord Chief Justice resumed his charge to the jury (p. 220):

L. C. J. Then, gentlemen, as to this matter which they have objected, that this list given on the day of the intended assassination, ought not to be allowed as evidence to prove the treason, because it is not specially laid in the indictment, but is by the late act of parliament excluded from being proved to convict the prisoner: Now though the act doth exclude the giving in evidence of any overt-act that is not laid in the indictment, yet it doth not exclude such evidence as is proper and fit to prove that overt-act that is laid in the indictment. Therefore the question is, Whether this giving of the list does not prove some overt-act that is alledged in the indictment? There is in the indictment an agreement laid to kill the king; and if that be proved, that is an overt-act of this treason. Now when the consent and agreement of Mr. Rookwood to that design is proved, surely the proof of his giving a list of men, is a further proof that he did agree to it, and then it is very proper to be given in evidence; for if by the new statute no one act can be given in evidence to prove another, then must not only the overt-act, but also the evidence of that act be expressed in the indictment.

Similarly, in the *Trial of Layer, supra*, the defendant was charged with high treason in composing and imagining the death of the king, and the overt-acts alleged were the conspiring to depose the king and to place the Pretender on the

throne. Evidence was offered of Layer's corresponding with the Pretender, which was not alleged in the indictment, and which was made a separate kind of treason by the St. 13 Will. III, c. 3. Objection was made (16 How. St. Tr. 220 *et. seq.*), and Mr. Hungerford, for the prisoner, said (p. 222):

> There is an act of parliament in the last year of King William, whereby the Pretender is attainted, which makes corresponding with the Pretender, or any of his adherents high treason; and when any man commits that particular treason, he is liable to be taken up and prosecuted for it. Now, my lord, shall they be admitted to give an evidence of a treason committed in breach of one act of parliament, when they are prosecuting him upon another; they may as well offer evidence against him for counterfeiting the great seal, or clipping and coining, for the sake of evidence: we hope this practice shall not be allowed * * *

The objection was overruled and the evidence received, Sir John Pratt, L. C. J., saying (p. 223):

> *L. C. J.* Sure as this evidence is offered it is very proper; consider, in the indictment the overt-acts are, meeting, consulting, advising and agreeing to raise a rebellion. The next is, publishing a traitorous libel, in which rewards are promised to those that would assist in this rebellion; a third overt act is, the engaging and list-

ing men for the service of the Pretender; a fourth is, a designing to depose the king; and another is, to set up the Pretender on the throne: Now, consider, if they have not given an evidence of these overt-acts, whether sufficient or not, that must be left to the jury; if they have given evidence of these acts, a design to set up the Pretender, and to depose the king, &c. If they are not proper to shew for this purpose this gentleman corresponded with Rome, was with the Pretender, these letters sent from sir William Ellis to him: letters (according to his desire) purporting receipts for sums of money to be signed by the Pretender, as a foundation to oblige him to make re-payment: After this and these things have been offered, is it not proper to go as far as they can on this head, and shew how far he hath been engaged with the Pretender and his accomplices? Sure it is proper, as a further evidence of these overt-acts.

The cases of *Deacon* and *Wedderburn*, *supra*, both tried in 1746, and both fully reported in Foster's *Crown Law*, are to the same effect; it was held in each "that an Overt Act not laid may be given in Evidence, if it be a direct Proof of any of the Overt Acts that are laid."

The meaning of Section 8 of the St. 7 Will. III, c. 3, is accordingly summed up in Foster's text as follows (*Crown Law*, 245):

> The Sense of this Clause I take to be, that no Overt-Act amounting *to a distinct*

> *Independent Charge*, though falling under the same Head of Treason, shall be given in Evidence, unless it be expressly laid in the Indictment; but still, if it amounted to a direct Proof of any of the Overt-Acts that are laid, it may be given in Evidence of such Overt-Acts.

The matter is thus clear on the decided cases. And certainly, on principle, the mere circumstance that particular overt acts were first alleged and then withdrawn does not render evidence thereof less relevant on the issue of intent. To assert the contrary is to urge a formalism quite unrelated either to truth or justice.

3. Petitioner contends (Pet. 37–38) that the treason clause of the Constiution permits the use of a confession only when made in open court, and that hence it was improper to receive any evidence of his extra-judicial confessions. But his argument in this respect wholly misconceives the meaning of the Constitutional provision.

The Constitution (following the St. 7 Will. III) permits a confession to take the place of two-witness proof of the overt act only if the confession is made in open court; but, where the overt act is otherwise sufficiently proved by two witnesses, the provision does not preclude the use of an extra-judicial confession as evidence by way of corroboration. Both the English cases under the St. 7 Will. III and the early American treason cases hold squarely that an extra-judicial confes-

sion, although insufficient in itself to establish treason, may none the less properly be offered in addition to other proof. *Trial of Francis Willis,* 15 How. St. Tr. 614, 623–625 (1710); *Respublica* v. *Roberts,* 1 Dall. 39 (Pa. 1778); *Respublica* v. *McCarty,* 2 Dall. 86 (Pa. 1781) *Case of Fries,* Fed. Case No. 5126, 9 Fed. Cas. at 909 (C. C. D. Pa. 1799); Foster, *Crown Law,* 241–242.

Willis was tried at the Old Bailey in 1710 for high treason by levying war, "under Pretence of pulling down Meeting Houses." When a witness was asked for a conversation had with the prisoner, Willis' counsel objected. The extracts which follow show the scope of the ruling (15 How. St. Tr. at 623–625):

> Mr. *Darnell.* My lord, we humbly submit it, that what he has said, cannot be made use of against him; for the statute of the seventh of king William directs, that he shall not have any evidence given against him relating to his word; for the act directs, that * * * no person shall be attainted of high treason * * * but by the oaths and testimony of two lawful witnesses, either, both to the same overt-act, or one to one, and the other to another overt-act of the same treason, unless the party willingly, in open court, confess the same, or stand mute, &c.
>
> *L. C. J.* [Sir Thomas Parker, later Lord Macclesfield]. Where do you find in that act, that what he confesses is not to be given in evidence?

Mr. *Darnell.* Because that act provides, that none shall be tried but upon the oaths of two witnesses to an overt-act. Unless the person shall confess in open court, he shall be tried by the oaths of witnesses to an overt-act. Now to what he has done they may call witnesses; but to what he has said, we hope they shall not. Confessions are, in all cases, a dangerous evidence, and to be used very cautiously * * *

L. C. J. * * * Suppose two witnesses prove an overt-act, and besides them there should be others to prove his confession, is not that act complied with, when some prove the fact, and others come in confirmation of them? It does not follow but that if there be two witnesses to overt-acts, there may be as many others to prove confessions; It does not say, that no evidence shall be given but of overt-acts.

L. C. Baron. [Sir Edward Ward]. If a man confesses before a magistrate that he is guilty of treason, and that confession of his should be proved by two witnesses, it may be disputed, whether he shall be convicted on that evidence, because it is said, there must be two witnesses to an overt-act. If they have no other evidence but his confession, then will be a proper time to make your objection; but till then, there is no reason to object against what is now offered.

* * * * *

Justice Tracy [J. C. P.] I never knew it disputed, but a man's confession might be given in evidence.

Mr. *Darnell.* The act says, he shall not be tried, but on the oaths of two witnesses to an overt-act, unless the party willingly, in open court, confess the same; which shews what confession it is that is to be admitted of.

L. C. J. Then you say, no confession shall be given in evidence; Now, pray, what words are there in the act, that say no confession shall be given in evidence?

L. C. Baron. A confession shall not supply the want of a witness; there shall be two witnesses to the treason notwithstanding: But to say it shall not be given in evidence, there is no ground for it.

In *Respublica* v. *Roberts,* 1 Dall. 39, *supra,* decided in 1778, a confession of the defendant, offered in evidence, was objected to. Counsel for the defense, among them James Wilson, objected, and cited the St. 7 Will. III, c. 3, and a Pennsylvania statute which "totally excludes a conviction by confession." But the court admitted the confession, saying (1 Dall. at 40):

> To prove the defendant's confession by two witnesses, is certainly not sufficient, under the statute, to convict him. But a confession after the fact, is a proof of the *fact itself;* and though not competent alone to supply the want of two witnesses, yet it is good by way of corroboration: and

> therefore, if an *overt* act has been proved in the county of Chester, by two witnesses, the evidence now offered will be proper, in confirmation of their testimony.

After conviction, counsel moved for a new trial on the ground "that the evidence given respecting his declarations, or confessions, was altogether illegal, and ought not to have been allowed." But after full argument, the motion was refused; "and the defendant, a short time afterwards, was accordingly executed." 1 Dall. at 40.[82]

The same rule was applied in *Respublica* v. *McCarty*, 2 Dall. 86, *supra*, where the opinion of the court and the charge of McKean, C. J., both discuss the St. 7 Will. III.

Similarly, at the first trial of *Fries*, *supra*, Peters, D. J., charged the jury that (9 Fed. Cas. at 909),

> The confession of the prisoner may be given in evidence as corroboratory proof of the intent, or quo animo. But, although proved by two witnesses, being made out of court, it is not of itself sufficient to convict. Two witnesses are necessary to prove the overt act. But the intent may be proved by one witness, collected from circumstances, or even by a single fact.

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[82] It seems significant that James Wilson, whose client was hanged under this view of confessions, did not urge the Constitutional Convention to change it, nor did he mention the point in the *Lectures on Law* which he delivered in 1790 and 1791. 3 *Works of James Wilson* (1804), 95–105, 172, 159–161.

We think the matter clear, both on principle and on precedent; there was no error in the trial judge's charge in this respect.[63]

B. *The evidence relative to Herbert's hostile mission was properly admitted.*—Petitioner also challenges (Pet. 38–41) the admissibility of Burger's testimony and the exhibits introduced in connection therewith concerning the mission of the saboteurs. He is mistaken in his contention that this evidence was admitted on the issue of trea-

[63] The following instructions bore on this point (R. 41–42; R. 36):

61. The court has also permitted the Government to introduce evidence of certain alleged admissions made by the defendant after he was in custody. You are instructed that such evidence may be considered by you solely on the issue of the intent or state of mind of the defendant in committing, if he did commit, any of the overt acts alleged in the indictment and submitted to your consideration in these instructions. In other words, any witness who may have testified to such alleged admissions is not a "witness" within the meaning of the Constitutional requirement of "two witnesses to the same overt act."

45. By the term "witnesses," used in this connection the Court does not mean persons who testify to admissions, if any, purportedly made by the defendant before the commencement of this trial. Neither admissions, if you believe any were made by the defendant, nor persons who took the stand to testify to such admissions, if any, are "witnesses" within the meaning of the foregoing provision of the Constitution, and neither such admissions, if any, nor any persons testifying to them, if any, can be considered by the jury as a substitute for the Constitutional requirement.

sonable intent.[64] The testimony and exhibits were admitted in evidence solely upon the issue of Herbert's enemy status (R. 136–138, 191), and the judge expressly instructed the jury that this evidence was limited to that issue (R. 42).[65] The evidence was thus an essential part of the case for

[64] Petitioner's argument in this respect (Pet. 38–39) is based on a statement in the majority opinion below, discussing the sufficiency of the overt acts charging purchase of the automobile (R. 905). Although, in any event, a statement in the opinion of the circuit court of appeals would not show error at the trial, it is clear that the majority opinion below discussed Burger's testimony, not on the issue of intent, but as a part of the setting in which the act of purchasing the automobile must be considered to determine whether it was an act of aid and comfort to the enemy.

[65] The judge's instruction was as follows (R. 42):

> 62. You are further instructed that the testimony of Ernest Peter Burger and the testimony of any other witness, if any, concerning alleged events which may have taken place in Germany and France at the time of Herbert Haupt's alleged stay in those countries, and the testimony, if any, of any witness concerning alleged events in Florida, and all exhibits in evidence which may have been identified by any witness who may have testified to any such events, and all testimony, if any, of witnesses concerning alleged acts of Herbert Haupt and alleged utterances and statements purportedly made by him, both prior to and during his stay in Chicago in 1942, and out of the presence of this defendant, and all articles purportedly taken from the person of Herbert Haupt while in Chicago in June, 1942, and admitted in evidence, have been admitted for the sole and limited purpose of determining whether the said Herbert Haupt was or was not an agent of the Government of the German Reich and an enemy of the United States as charged in the indictment, and you are to consider this evidence solely on this question.

the limited purpose for which it was received. The propriety of producing such evidence to show that Herbert was an enemy agent was recognized by petitioner's counsel in his opening statement (R. 101–102), and the evidence was received for this limited purpose without objection by petitioner (R. 136–138, 191).

It was, of course, an essential part of the Government's case to prove that Herbert was an enemy agent who was in this country for the purpose of performing a hostile mission. The nature of the mission was the setting in which, under the *Cramer* decision, the overt acts performed by petitioner had to be judged. And the character of the mission was a vital element in determining, not only petitioner's guilt, but the gravity of his offense in giving aid and comfort to the enemy.[66] In this case, there was not, as in the *Cramer* case, a concession of the enemy status of the saboteur at the time the aid was given; in fact, defense counsel indicated in his opening state-

[66] "His plea was not guilty, and he could not prevent the introduction of competent evidence to prove every element of the crime charged by admitting a part of them. The People were entitled to present to the jury all the facts, in order that they might have proper weight in determining criminal intention and what the verdict ought to be, as well as to decide whether the punishment should be by a fine, only, or by fine and imprisonment * * *." *People* v. *Munday*, 293 Ill. 191, 206, certiorari denied, 254 U. S. 638. See also *Abshier* v. *People*, 87 Colo. 507, 524–525; *State* v. *Griffin*, 218 Iowa 1301, 1311–1312.

ment that he intended to show that Herbert had abandoned the hostile mission (R. 102–103).

C. *The trial judge properly exercised his discretion to permit the prosecution to cross-examine a hostile witness.*—Petitioner's argument (Pet. 37) that it was improper to permit the Government to cross-examine Zermer as a hostile witness is totally without merit. As we have shown (*supra*, pp. 26–27), Zermer was a friend of petitioner's who had agreed to receive Herbert's mail for him, at petitioner's request, and who had also been asked by petitioner to furnish Herbert with lodging. At the previous trial of petitioner, Zermer gave highly incriminating testimony concerning petitioner's efforts to arrange for Herbert's lodging. Yet at the present trial he professed to have no such information (R. 335–337). It is well established that in such circumstances the trial judge has discretion to permit the prosecution to cross-examine its own witness. *Hickory* v. *United States*, 151 U. S. 303, 309; *Walker* v. *United States*, 104 F. 2d 465, 470 (C. C. A. 4); *United States* v. *Graham*, 102 F. 2d 436, 441–442 (C. C. A. 2), certiorari denied, 307 U. S. 643.

V. THE CLOSING ARGUMENTS OF GOVERNMENT COUNSEL INVOLVED NO MISCONDUCT AND WERE THOROUGHLY PROPER AND PROFESSIONAL

By reference to his brief in the court below (Pet. 47), petitioner attacks various statements

made by government counsel in their closing arguments to the jury. His contentions in this respect were apparently considered by the circuit court of appeals to be so completely devoid of merit as not to warrant discussion, despite the comprehensiveness of the opinion below in other respects.

Basically, petitioner objects to the references to evidence which was admitted on the question of intent (C. C. A. Br. 226–230, 231–233). But his objection there rests on the erroneous assumption that such evidence was incompetent. Since, as we have shown, *supra*, pp. 130–149, all of this evidence was admissible, it was obviously not improper for counsel to refer to it in summing up the case to the jury.

For the rest, we submit that the passages which petitioner quoted below (C. C. A. Br. 225–234) are not improper, even when considered on their face apart from their context, and that, when read in their proper place in the entire arguments (R. 742–772, 808–820), they are unassailable.

It was not improper to tell the jury that, after war had been declared, every German spy was an enemy of the United States, no matter what his relationship to a citizen of the United States, and that relationship did not excuse treason (R. 743; C. C. A. Br. 225).[67] Nor was it improper, in

[67] Compare *The Eliza*, 4 Dall. 37, 40, *per* Washington, J.: "* * * every contention by force, between two nations, in external matters, under the authority of their respective

placing the acts of treason in their setting, to refer to the fact, which had been established by proper evidence (e. g., of petitioner sending Herbert to the Bund camp, *supra*, pp. 28–29), that petitioner had instilled in Herbert a pro-Nazi philosophy (R. 748–749; C. C. A. Br. 226).[68]

The next passage which petitioner quotes occurred after eight pages of argument in the original transcript, when Government counsel was answering the contention originally advanced by the defense that Herbert had abandoned his mission when he went to live with his parents in Chicago (R. 753; C. C. A. Br. 226). Defense counsel's objection to the prosecutor's reference to Herbert's execution was immediately sustained by the court (R. 753), but neither the objection nor the ruling is referred to in petitioner's brief below.

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governments, is not only war, but public war. If it be declared in form, it is called solemn, and is of the perfect kind; because one whole nation is at war with another whole nation; and all the members of the nation declaring war are authorized to commit hostilities against all the members of the other, in every place and under every circumstance. In such a war, all the members acts under a general authority, and all the rights and consequences of war attach to their condition."

[68] Compare *Knauer* v. *United States*, No. 510, Oct. T. 1945, decided June 10, 1946, p. 6 of slip opinion: "In the fall of 1936 he enrolled his young daughter in the Youth Movement of the Bund—a group organized to instill the Nazi ideology in the minds of children of German blood. They wore uniforms, used the Nazi salute, and were taught songs of allegiance to Hitler."

The only other statement objected to—government counsel's telling the jury that their verdict should not be based on sympathy but on the evidence (R. 771, 808; C. C. A. Br. 230–231)—was obviously not error.

A reading of the closing arguments as a whole shows that government counsel, though they argued their case thoroughly and persuasively, exercised proper professional restraint, and conducted themselves at all times in a thoroughly lawyer-like manner. The charge that they appealed to war hysteria and prejudice is, in our view, utterly without foundation.

VI. THERE WAS NO ERROR IN THE TRIAL JUDGE'S INSTRUCTIONS TO THE JURY

Petitioner's objections to the trial judge's charge to the jury (R. 28–43; Pet. 47–48, 58–88) are largely based on the contentions already discussed in earlier sections of this brief.

A. *The instructions given were correct.*—Instruction No. 26 (R. 33; Pet. 58–59) in which the judge summarized the indictment, including a statement of the overt acts later withdrawn, was not improper since the judge had previously instructed the jury that the indictment was not evidence (No. 14; R. 705), and later specifically cautioned the jury to consider only the submitted overt acts as possible acts of aid and comfort (Nos. 47–49; R. 36–39). Petitioner's argument that the summary of the withdrawn overt acts

was prejudicial is based on his erroneous contention (see pp. 137–144, *supra*) that testimony of the unsubmitted acts was irrelevant.

Instruction No. 36 (R. 34–35; Pet. 59–60), summarizing the elements of treason as they applied to this case, cannot be judged alone. It did not purport to be a complete definition of the offense, but was merely a portion of the judge's charge dealing generally with the concept of treason. Subsequently, the judge gave full instructions on the necessity of finding an overt act (Nos. 38–41, R. 35), and on the requirement of proof of that act by two direct witnesses (Nos. 42–49, R. 35–39); and he had earlier admonished the jury that they must consider his charge as a whole (No. 15, R. 31).

Instruction No. 41 (R. 35, Pet. 61), dealing with an overt act, may not fully comport with the definition of overt act laid down in the *Cramer* opinion, though when read together, as it must be, with Instruction No. 40 (R. 35), the difference is probably not substantial. But since the overt acts actually submitted to the jury were in fact acts of aid and comfort to the enemy, and since the jury was required to find that petitioner performed such acts, the erroneous characterization of the overt acts is of no moment. Moreover, petitioner's objection to this instruction is not based on the *Cramer* rule, but on the trial judge's refusal (R. 684–685) to change the words "perfectly innocent act" to "perfectly innocent ap-

pearing act." Petitioner was certainly not harmed by failure to make the change.

Instruction No. 49 (R. 39, Pet. 61–63), dealing with the withdrawn overt acts as evidence of intent, has already been discussed, pp. 137–144, *supra*, as have Instructions 50 and 51 (R. 39, Pet. 63–64), requiring the jury to find only one overt act proved by two direct witnesses. See pp. 98–129, *supra*.

Instructions Nos. 53 and 54 (R. 40, Pet. 64–73), discussing intent and distinguishing intent and motive, are, as we have shown, *supra*, pp. 53–57, in accord with established principles, recognized by this Court in the *Cramer* decision.

Instructions Nos. 55–58, and 60–61 (R. 40–42, Pet. 73–77) deal with the evidence to be considered on the issue of intent. For the reasons canvassed above, pp. 130–149, it is clear that these instructions correctly stated the law.

B. *The requested instructions were properly refused.*—Petitioner's requested instructions on the Illinois statute defining an accessory after the fact (Pet. 77–80) were, as we have already pointed out, *supra*, p. 57, clearly wrong. Apart from the circumstance that a state statute cannot vary the scope of a federal crime defined in the federal Constitution itself, the gravamen of the offense here is not that petitioner became an accessory after the fact to Herbert's offense by concealing a known criminal, but that; by

sheltering and harboring a known enemy agent, petitioner himself committed the crime of treason.

The requested instructions relating to intent (Pet. 77–78, 83–85), insofar as they did not embody petitioner's erroneous theory that a motive to aid his son precluded a treasonable intent, were covered in the judge's charge. The judge had also adequately charged the jury on the caution to be accorded the testimony of persons convicted of a felony (Pet. 80–82; see No. 13, R. 30), and on the presumption of innocence, burden of proof and reasonable doubt (Pet. 82–83; see Nos. 6–9, R. 29–30). Cf. *Agnew* v. *United States*, 165 U. S. 36, 51; *Bennet* v. *United States*, 227 U. S. 333, 339; *United States* v. *Trenton Potteries*, 273 U. S. 392, 396.

Before leaving the subject of the trial judge's instructions to the jury, it seems appropriate to call attention to the painstaking care with which they were framed. The judge held long conferences in chambers with counsel for the parties, and discussed three drafts with them—his own (R. 703–715), the Government's (R. 716–725), and the defendant's (R. 725–738). These discussions are set out in full in the record (R. 669–703, 732–742, 773–775). In those circumstances, a further request on petitioner's part for a modification of the instructions, made some five hours after the jury had retired (R. 823), was denied, the judge saying (R. 824), "Never in the thirteen

years that I have been here have I given counsel the opportunity to make suggestions and objections to instructions that I have given them in this case."

We doubt whether there are many records on the files of this Court that show in such complete detail the reasons that led to the choice of the instructions finally given, or which show the meticulous attention to a proper charge which this case reflects.

VII. NO ERROR OCCURRED IN CONNECTION WITH THE DELIBERATIONS OF THE JURY

A. *It was proper to send the indictment and charge to the jury room.*—The trial judge permitted the jury to take a copy of the indictment, which the jury was told was not evidence (No. 14, R. 31), and a copy of the charge with them into the jury room. The judge clipped to the indictment a statement of the overt acts withdrawn and submitted (R. 44, 773–774). Petitioner urges (Pet. 49–50) that this was error. It is settled, however, that such matters are within the discretion of the trial judge. *Little* v. *United States*, 73 F. 2d 861, 864 (C. C. A. 10); *Capriola* v. *United States*, 61 F. 2d 5, 7 (C. C. A. 7); *Murray* v. *United States*, 130 F. 2d 442, 444 (App. D. C.); *Garst* v. *United States*, 180 Fed. 339, 345 (C. C. A. 4).[*] Where, as here, there are involved

[*] In the *Stephan* case, it was held not error to read the indictment to the jury. 133 F. (2d) at 99.

twelve overt acts which the jury was required to pass upon, and a lengthy charge, we think it is clear that there was no abuse of that discretion.[70]

B. *It was proper to read the testimony of three witnesses to the jury at its request.*—On the morning after the jury retired, they advised the court, through their foreman, that they desired that the testimony of defense witness Short and government witnesses Hirsch and Robe be read to them.[71]

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[70] See the following colloquy which took place in chambers (R. 675):

> Mr. Bertram. * * * I will make this objection or comment to the instruction which later on states, "That the indictment is to be given to the Jury, so that they may take it into the jury room." We believe it is unnecessary, and also it is unfavorable to the defendant, and prejudicial to him for the court to repeat the charges of the indictment as part of the charge to the Jury.
>
> The Court. Oh, my dear man! How are you going to tell the Jury what the charge against the man is? How in the world can you tell these fourteen people what this man is being tried for? * * * I don't know how to instruct the Jury what the charges against him are, otherwise, than substantially in the words of the indictment, and I have already told them clearly the story as I can, that the indictment is not evidence or the fact he was indicted is not to be considered as evidence.

[71] Short had testified that he was a lawyer of over fifty years' standing at the bar; that he, accompanied by petitioner's present counsel, interviewed petitioner at the Cook County Jail on July 29, 1942; that from that interview he concluded that petitioner was insane; but that he filed no petition in any court asking for an adjudication of petitioner's sanity (R. 639–644). A sanity hearing was in fact

The trial judge thereupon summoned counsel on both sides to discuss with them the propriety of granting the jury's request. Petitioner's counsel opposed granting the request, and government counsel expressed concern over granting the request unless petitioner's counsel concurred in the action. The trial judge finally concluded that fairness to the jury required that its request be granted and that a cautionary instruction would adequately protect both sides (R. 825–830). He said (R. 826, 827):

> * * * It is a question, really, in fairness to these people that have given almost three weeks of their time to try this case. They make what to anybody on the street would seem to be a reasonable request. That is the way I feel about it. I do think if it is read to them they should be cautioned, we should say to them now, you must bear in mind that you are hearing this testimony for the second time, at your request. You are hearing it for the second time, you should exercise caution to see that you do not give it more weight than the testimony of other witnesses. Bear in mind that you are hearing it the second time, and consider it just as though you heard the witnesses, together with all other

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held before petitioner was tried on the treason charge, and he was found sane (R. 13–15; cf. R. 863–869).

Hirsch and Robe were the F. B. I. agents who had testified concerning the admissions petitioner had made to them on August 5, 1942 (see pp. 22–25, *supra*).

testimony. With that instruction, I can't see any reason in the world why they should not hear the evidence if you want to have a fair trial. * * *

* * * We must assume here are twelve people trying to do their duty to the very best of their ability and they make, what seems to be a reasonable request and to anybody that wasn't a lawyer, that would seem a most reasonable request, and merely because we are lawyers why should it seem unreasonable. I don't see it. * * *

Accordingly, the jury returned to the courtroom, the testimony of the three witnesses was read to them (R. 830–845), and the court then instructed the jury as follows (R. 845):

> Ladies and gentlemen, pursuant to the written request of the jury through your foreman there has been read to you a transcript of the testimony of the witnesses, Short, Hirsch, and Robe. The jury are cautioned to bear in mind that they have now heard the testimony of these three witnesses twice while they have heard the testimony of the other witnesses only once, and that they shall not allow the fact that they have heard the testimony of these three witnesses twice to cause them to give undue importance or weight to it. The jury should, on the other hand, consider the testimony of these three witnesses, and that of each of them, as though they had heard it but once and consider it together with all of the other evidence in the case.

Although the practice of reading portions of the testimony of the jury at their request is not an uncommon one in the federal courts, its propriety seems not to have been made the subject of appellate decision either in civil or criminal trials.[72] We think it is clearly a matter for the discretion of the trial judge, and, in this case, considering the length and complexity of the trial, the fact that the jury's request related to testimony on both sides of the case, and that the judge cautioned the jury not to give undue emphasis to the re-read testimony, no abuse of discretion was shown. The practice here followed has been approved in numerous state cases, *Garcia* v. *State*, 26 Ariz. 597, 601; *Lutins* v. *State*, 142 Fla. 288, 289; *Green* v. *State*, 122 Ga. 169, 170–171; *State* v. *Jester*, 46 Idaho 561, 573; *State* v. *Logue*, 115 Kan. 391, 393; *People* v. *Kasem*, 230 Mich. 278, 288; *Duffey* v. *State*, 124 Neb. 23, 26; *State* v. *Jennings*, 131 Ore. 455, 475, 476; *Moore* v. *State*, 131 Tex. Crim. 420, 424; *Willard* v. *State*, 195 Wis. 170, 174.

C. *The jury's deliberations were not of undue length.*—There is no merit in petitioner's contention (Pet. 50–51) that the mere fact that the jury deliberated for approximately 28 hours constitutes reversible error. At the time when the jury sent in its request for the rereading of

[72] The practice has been upheld by a district court. *United States* v. *Hammond*, 226 Fed. 849, 854–855 (N. D. Cal.), reversed on other grounds, 246 Fed. 40 (C. C. A. 9).

testimony, counsel for the defense called the judge's attention to the fact that the jury had been out about 24 hours, and the judge stated that the jury appeared to be in good condition (R. 829). Convictions returned after deliberations for as long or longer periods of time than the time here involved have been sustained. *Hyde* v. *United States*, 225 U. S. 347, 383 (three days and three nights); *Culp* v. *United States*, 131 F. 2d 93, 101 (C. C. A. 8), (one day); *Bochm* v. *United States*, 123 F. 2d 791, 812 (C. C. A. 8), certiorari denied, 315 U. S. 800 (26 hours); *Mendelson* v. *United States*, 58 F. 2d 532, 535 (App. D. C.) (one day and a half); *Bernal* v. *United States*, 241 Fed. 339, 342 (C. C. A. 5), certiorari denied, 245 U. S. 672 (almost two days).

D. *The jury's plea for clemency shows that its verdict did not rest on war-time passion.*—Petitioner's contention (Pet. 54–55) that the verdict of the jury was the result of passion, prejudice, and war hysteria is answered by the record. After the verdict was reached, the jury indulged in the unusual practice of writing a letter to the trial judge, signed by all the jurors (R. 45, 847), which reflects their mental attitude toward petitioner. This letter says:

> Realizing fully that our function terminates with the rendering of our verdict, we, the jury, are moved humbly to beseech your Honor's consideration in dealing mercifully with this defendant.

> In conformity with your Honor's instructions, neither pity nor sympathy has entered into our deliberations. In this plea, we express only what is in our hearts.

The trial judge was so impressed with this letter that, although his own considered view was that petitioner should be sentenced to death (see R. 53–55),[78] "In deference to the request of these men and women, whose judgment may be better than mine, the sentence will be life imprisonment and, because the statute requires it, a fine of $10,000." (R. 55).

Apart from the circumstance that, as the trial judge noted (R. 54), the verdict "was fully justified by the evidence", and "No other verdict than that rendered was reasonably possible" (R. 54), it certainly cannot reasonably be said that a jury which voluntarily pleaded for mercy for petitioner based its verdict on such extraneous matters as war hysteria, passion, or prejudice.

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[78] "The court does not believe that Hans Max Haupt can be reformed. He is and always will be a Nazi.

"The court does not believe that it need by punishment try to prevent Hans Max Haupt from committing treason again. While the court believes that the defendant's mental faculties are unimpaired, his spirit is broken and he is not likely to commit treason again.

"What punishment is necessary to be imposed in order to deter other like-minded persons from committing like crimes? My conscience tells me that there is but one answer to that question and that answer is—Death. * * *" (R. 54).

CONCLUSION

Petitioner was convicted of treason after a sober, careful, and eminently fair trial, on the basis of evidence clearly establishing by the required two witnesses a number of legally sufficient overt acts of aid and comfort to the enemy, and clearly showing intent to betray. Reversal of the judgment below can be supported only by artificial refinements and technicalities which find no support in the treason clause of the Constitution. We therefore respectfully submit that the judgment below should be affirmed.

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THERON L. CAUDLE,
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NOVEMBER 1946.

U. S. GOVERNMENT PRINTING OFFICE 1946

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1946.

No. 49

HANS MAX HAUPT,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

Petition for Rehearing

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PETITION FOR RE-HEARING

To the Honorable, the Chief Justice and Associate Justices, of the Supreme Court of the United States:

Your Petitioner, Hans Max Haupt, respectfully shows unto the Court, as grounds for this Petition for a Rehearing, the following:

The majority opinion of this Honorable Court grants the legal necessity for a reversal of the conviction of Hans Max Haupt, if *any one* of the submitted overt acts were insufficient or insufficiently proved. But the majority opinion, notwithstanding the clear necessity to examine each submitted act and the proof thereon *separately* for its insufficiency in law and the sufficiency of the proof under the requirements of the Constitution, totally failed to do so.

The opinion uses the obviously inappropriate cumulative method of examining the acts and the evidence en masse under group division treatment.

Upon the matter of the *legal sufficiency* of acts submitted to the jury we direct the Court's special attention to the following:

Overt Act No. 10 submitted to the jury, was as follows:

> "10. Said Hans Max Haupt, on or about June 22, 1942, accompanied said enemy, Herbert Haupt, to the home of Andreas Conrad Grunau, 6361 Leoti Avenue, Chicago, Illinois for the purpose of assisting the said Herbert Haupt in securing employment so that the said enemy might conceal his identity and mission as an agent of the German Reich and be permitted and enabled to carry out and pursue his said mission."

Stripped of the language relating to the purpose or intent of the defendant, the only action charged against Haupt as an overt act of treason, is that he accompanied Herbert Haupt to the home of Andreas Conrad Grunau.

(It may be pointed out here that contrary to the assumption made in the opinion Herbert Haupt did not obtain employment as a result of his interviews with Grunau and Heinrich Koch and therefore was not assisted in obtaining employment in the lens plant.)

Overt Act No. 10 of Haupt is indistinguishable as a matter of substance from Overt Act No. 2 in the *Cramer Case*, viz:

> "2. Anthony Cramer, the defendant herein, on or about June 23, 1942, at the Southern District of New York and within the jurisdiction of this Court, did accompany, confer, treat, and counsel with Werner Thiel, an enemy of the United States, for a period of time at the Twin Oaks Inn at Lexington Avenue and 44th Street, and at Thompson's Cafeteria on 42nd Street between Lexington and Vanderbilt Avenues, both in

the City and State of New York, for the purpose of giving and with intent to give aid and comfort to said enemy, Werner Thiel."

Overt Acts Nos. 11, 13 and 15, likewise charge as the only action of Haupt constituting the overt act, that the defendant Haupt *accompanied the enemy Herbert Haupt*, to a particular place at a specified time.

As the Honorable Justice, Mr. Douglas, pointed out, the decision in the case at bar is inconsistent with the decision in the *Cramer Case*. Unless it is the intention of this Honorable Court to repudiate the doctrine of the *Cramer Case* then in all consistency the conviction of Haupt in the case at bar should be reversed. There is, indeed, more reason and more serious error to require the reversal of the case at bar than there was in the Cramer Case.

Upon the matter of the sufficiency of the proof in accordance with the requirements of the Constitution, we direct the Court's attention to the following:

There are six harboring charges (viz: Overt Acts Nos. 12, 17, 20, 21, 22 and 23) all of which, except Overt Act No. 17, rested entirely upon circumstantial evidence instead of direct testimony by two witnesses, and were clearly not proved as required by the Constitution.

We beg to differ with the majority opinion statement that "The act to be proved is harboring and sheltering in the house at No. 2234 North Fremont Street", which is used as a basis for the conclusion that more than two witnesses testified "that the saboteur stayed in the house where the father lived and with the latter's knowledge."

The indictment charged, in the case of each of the six harboring acts, Nos. 12, 17, 20, 21, 22 and 23, that the defendant, Hans Max Haupt, on a particular date,

"harbored and sheltered the said enemy, Herbert

Haupt, at the home of Hans Max Haupt and Erna Haupt, 2324 N. Fremont Street, Chicago, Illinois," etc.

As was stated by his Honor, Judge Major, in his dissenting opinion in the Circuit Court of Appeals, with particular reference to Overt Act No. 23, which charged the defendant with harboring Herbert Haupt on June 27, 1942,

> "Every word uttered by these witnesses which proved or tended to prove that Herbert Haupt was in the home of the defendant (the third floor apartment) on June 27, 1942, is purely circumstantial. There is not a word of direct proof in support thereof. More than that, it should not be overlooked that Hans Max Haupt and not Herbert Haupt is the defendant in this case, and there is not a scintilla of testimony, either direct or circumstantial, that the former was either in or about the apartment on this date. In fact, his name is not even mentioned by the witnesses. Just how the defendant was shown, by the direct testimony of two witnesses, to have committed this act, without even a mention of his name, is one of the several imponderabilities presented by the majority opinion."

Other than as to the occasion specified in Overt Act No. 17, there were no witnesses at all to the presence of the defendant in the apartment at the same time with Herbert, or regarding *any act of the defendant* relating to the charge of harboring Herbert.

There was not sufficient proof of adherence to the enemy, as the acts of aid and comfort, charged in this case, were natural acts of aid for defendant's own son.

The Constitution limits and defines the crime of treason as follows:

> "Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort."

This Honorable Court, in the Cramer case recognizes the principles which we are contending for, and which the Constitution clearly delineates.

In *Cramer* v. *United States*, 325 U. S., 1, at page 29, this Court said:

> "Thus the crime of treason consists of two elements: adherence to the enemy; and rendering him aid and comfort. A citizen intellectually or emotionally may favor the enemy and harbor sympathies or convictions disloyal to this country's policy or interest, but so long as he commits no act of aid and comfort to the enemy, there is no treason. On the other hand, a citizen may take actions which do aid and comfort the enemy * * * but if there is no adherence to the enemy in this, if there is no intent to betray, there is no treason."

And again on page 35 of the same case, this Court said:

> "The two-witness principle is to interdict imputation of *incriminating acts* to the accused by circumstantial evidence or by the testimony of a single witness. The prosecution cannot rely on evidence which does not meet the constitutional test for overt acts to create any inference that the accused did other acts or did something more than was shown in the overt act, in order to make a giving of aid and comfort to the enemy."

In the opinion in the case at bar; *Haupt* v. *United States*, 67 S. Ct. 874, at page 879, this Honorable Court, upon the question of adherence, makes the following statement:

> "Certainly that relationship is a fact for the jury to weigh along with others, and they were correctly instructed that if they found that defendants intention was not to injure the United States but merely to aid his son 'as an individual, as distinguished from assisting him in his purpose, if such existed, of aiding the German Reich, or of injuring the United States, the defendant must be found not guilty.'"

We did not complain of this instruction, but, on the contrary we maintained that this was a correct statement of the law and that other instructions given by the trial court contradicted the statement and nullified its effect with the jury. (See Instructions Nos. 53 and 54; Petition for Certiorari, pages 64-66.)

Concerning *insufficiency of the evidence*, we again respectfully refer to Overt Act No. 16. There were not two witnesses to the allegation of the indictment, that "Hans Max Haupt * * * made a further payment in cash towards the purchase of an automobile for said enemy, Herbert Haupt * * * and did purchase said automobile for *said enemy, Herbert Haupt* * * *."

There were only two witnesses to the transaction of the purchase of an automobile by Hans Haupt, namely, Vinson and Farrell. Vinson specifically declared that the car was bought by Hans Haupt, but that there had been no conversation as to whether it was a car for Hans or somebody else. (Transcript of Record, page 312.)

The Overt Act, No. 16, alleges that Hans Haupt "did purchase said automobile for said enemy, Herbert Haupt." This is a definite allegation of the overt act as charged, and an overt act must be proven as laid, and in this case it must be proved by two witnesses to the overt act of so purchasing.

Any event which took place subsequent to the alleged overt act of so purchasing, whether on the same day or weeks later, would not constitute evidence to the overt act of so purchasing.

The Court's opinion (67 S. Ct. 874, at page 877) states, "The son took the car and drove it away." We respectfully submit that there is no evidence anywhere in the record,

that Herbert Haupt ever drove the particular car which was bought by his father. Farrell did not so testify, nor did Vinson, nor was any automobile ever driven by Herbert Haupt proven to have been the particular car which was purchased by Hans Haupt, and of which the serial number and factory number were well known.

Inasmuch as there was insufficiency of proof as to this overt act No. 16, we respectfully maintain, that the judgment must be reversed.

Concerning conversations and occurrences long prior to the indictment (as long as six years prior thereto), this Honorable Court states that the same "were admissible on the question of intent and adherence to the enemy." We contend that adherence to the enemy must have existed at the time of the commission of the overt acts of treason.

At the time of the particular conversations and occurrences, the United States was not at war. Then, there was no enemy and there could be no adherence to the enemy. The statements, if made, were contemptible, but did not constitute criminal acts at law.

The introduction of these statements and occurrences were intended by the prosecution to create prejudice and to obtain a conviction of the accused on the charge of treason for the commission of ordinary, commonplace acts. In fact, it is impossible to imagine any acts whatsoever by the accused which would have been more commonplace than some of the acts charged against him as treason.

The admission of Burger's testimony, concerning the sabotage school in Germany, concerning the many murderous exhibits, etc. (with which the accused had nothing to do), admitted "to prove enemy status of Herbert Haupt," the admission of the conversations and occurrences which

took place as many as six years prior to the indictment, would, during time of war, result in a guilty verdict by a jury, even if it had merely been charged that the overt act consisted of the accused in the company of Herbert Haupt visiting the church of their faith. It would have been a foregone conclusion that Hans Haupt went there to pray for the success of the enemy, and going there with his son, he gave aid and comfort to the enemy. By admission of such prejudicial evidence, it may be said that Hans Haupt was convicted of treason for acts committed while our country was not at war. The acts committed, while our country was at war, were, under Instructions Nos. 53 and 54(See Petition for Certiorari, pages 64-66), necessarily traiterous, no matter how commonplace or insignificant they may have been. When his son returned, Hans Haupt was doomed to be found guilty of treason no matter what he did, short of handing his son over to the Government for prosecution and punishment. Such was the necessary result of the admission of said evidence and the giving of said instructions to the jury by the trial court, which we contend denied the accused of a fair trial.

We respectfully submit that the admission in evidence of said statements and occurrences, which took place as many as six years prior to the indictment, constitutes error.

We respectfully petition this Honorable Court to grant a rehearing to the petitioner herein, and upon such rehearing that the prayer of his petition for writ of certiorari heretofore filed herein may be granted.

Respectfully submitted,

PAUL A. F. WARNHOLTZ,
Counsel for Petitioner.

FREDERICK J. BERTRAM,
Of Counsel.

CERTIFICATE OF COUNSEL.

I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for the purpose of delay.

Paul E. Harnholt

Counsel for Hans Max Haupt,
Petitioner.

SUPREME COURT OF THE UNITED STATES

No. 49.—October Term, 1946.

Hans Max Haupt, Petitioner, v. The United States of America.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[March 31, 1947.]

Mr. Justice Jackson delivered the opinion of the Court.

Petitioner, Hans Max Haupt, was indicted for treason, convicted and sentenced to life imprisonment and to pay a fine of $10,000. From this judgment of the District Court for the Northern District of Illinois he appealed to the United States Circuit Court of Appeals for the Seventh Circuit, which by a divided court affirmed. 152 F. 2d 771. A previous conviction of the same offense predicated on the same acts had been reversed. *United States* v. *Haupt*, 136 F. 2d 661.

Petitioner is the father of Herbert Haupt, one of the eight saboteurs convicted by a military tribunal. See *Ex parte Quirin*, 317 U. S. 1. Sheltering his son, assisting him in getting a job, and in acquiring an automobile, all alleged to be with knowledge of the son's mission, involved defendant in the treason charge.

The background facts are not in dispute. The defendant is a naturalized citizen, born in Germany. He came to this country in 1923 and lived in or near Chicago. In 1939 the son, Herbert, who had also been born in Germany, worked for the Simpson Optical Company in Chicago which manufactured lenses for instruments, including parts for the Norden bomb sight. In the spring of 1941

Herbert went to Mexico and, with the aid of the German Consul, from there to Japan and thence to Germany where he entered the employ of the German Government and was trained in sabotage work.

On the 17th of June 1942, Herbert returned to the United States by submarine. His mission was to act as a secret agent, spy and saboteur for the German Reich. He was instructed to proceed to Chicago, to procure an automobile for the use of himself and his confederates in their work of sabotage and espionage, to obtain reemployment with the Simpson Optical Company where he was to gather information, particularly as to the vital parts and bottlenecks of the plant, to be communicated to his co-conspirators to guide their attack. He came with various other instructions, equipped with large sums of money, and went to Chicago.

After some six days there, Herbert was arrested on June 27, 1942, having been under surveillance by Government agents during his entire stay in Chicago. This petitioner was thereafter taken into custody and was arraigned on July 21, 1942. He later asked to talk to an F. B. I. agent, two of whom were summoned, and he appears to have volunteered considerable information and to have given more in answer to their questions. He blamed certain others for the predicament of his son and wanted to testify against them. For this purpose, he disclosed that he had been present when Herbert had told the complete story of his trip to Mexico, Japan, his return to the United States by submarine, and his bringing large sums of money with him. During his confinement in the Cook County jail he also talked with two fellow prisoners concerning his case and they testified as to damaging admissions made to them.

The indictment alleged twenty-nine overt acts of treason. Its sufficiency was challenged by demurrer which was overruled and by a motion to quash which was denied. The defendant, at the close of the Government's case and again at the close of all the evidence, made motions for a

directed verdict generally and also specifically as to each overt act charged, all of which were denied. Seventeen of the overt acts were withdrawn before submission and twelve were submitted to the jury. Generally stated, the overt acts submitted fall into three groups of charges: First, the charge that this defendant accompanied his son to assist him in obtaining employment in a plant engaged in manufacturing the Norden bomb sight; second, the charge of harboring and sheltering Herbert Haupt; and third, the charge of accompanying Herbert to an automobile sales agency, arranging, making payment for and purchasing an automobile for Herbert. Each of these was alleged to be in aid of Herbert's known purpose of sabotage.

The defendant argues here that the overt acts submitted do not constitute acts of treason, but that each is commonplace, insignificant and colorless, and not sufficient even if properly proved to support a conviction. We have held that the minimum function of the overt act in a treason prosecution is that it show action by the accused which really was aid and comfort to the enemy. *Cramer* v. *United States*, 325 U. S. 1, 34. This is a separate inquiry from that as to whether the acts were done because of adherence to the enemy, for acts helpful to the enemy may nevertheless be innocent of treasonable character.

Cramer's case held that what must be proved by the testimony of two witnesses is a "sufficient" overt act. There the only proof by two witnesses of two of the three overt acts submitted to the jury was that the defendant had met and talked with enemy agents. We did not set aside Cramer's conviction because two witnesses did not testify to the treasonable character of his meeting with the enemy agents. It was reversed because the Court found that the act which two witnesses saw could not on their testimony be said to have given assistance or comfort to anyone, whether it was done treacherously or not. To

make a sufficient overt act, the Court thought it would have been necessary to assume that the meeting or talk was of assistance to the enemy, or to rely on other than two-witness proof. Here, on the contrary, such assumption or reliance is unnecessary—there can be no question that sheltering, or helping to buy a car, or helping to get employment is helpful to an enemy agent, that they were of aid and comfort to Herbert Haupt in his mission of sabotage. They have the unmistakable quality which was found lacking in the *Cramer* case of forwarding the saboteur in his mission. We pointed out that Cramer furnished no shelter, sustenance or supplies. 325 U. S. 1, 37. The overt acts charged here, on the contrary, may be generalized as furnishing harbor and shelter for a period of six days, assisting in obtaining employment in the lens plant and helping to buy an automobile. No matter whether young Haupt's mission was benign or traitorous, known or unknown to defendant, these acts were aid and comfort to him. In the light of his mission and his instructions, they were more than casually useful; they were aid in steps essential to his design for treason. If proof be added that the defendant knew of his son's instructions, preparation and plans, the purpose to aid and comfort the enemy becomes clear. All of this, of course, assumes that the prosecution's evidence properly in the case is credited, as the jury had a right to do. We hold, therefore, that the overt acts laid in the indictment and submitted to the jury do perform the functions assigned to overt acts in treason cases and are sufficient to support the indictment and to sustain the convictions if they were proved with the exactitude required by the Constitution.

The most difficult issue in this case is whether the overt acts have been proved as the Constitution requires, and several grounds of attack on the conviction disappear if there has been compliance with the constitutional standard of proof. The Constitution requires that "No person shall

be convicted of treason unless on the testimony of two witnesses to the same overt act. . . ." Art. III, § 3. We considered the application of this provision to the problems of proof in the *Cramer* case. Defendant claims this case in two respects falls short of the requirements there laid down as to all the overt acts which comprise harboring and sheltering the saboteur: First, that there was no direct proof that the saboteur was actually in the defendant's apartment, and second, that there is no direct proof that the defendant was in the apartment at any time when the saboteur was there. Both of these we find to be without merit.

The act to be proved is harboring and sheltering in the house at No. 2234 North Fremont Street. The defendant and his wife lived there in a third floor front apartment, which had but one bedroom. Federal Bureau of Investigation agents, never less than two, had the place under continuous surveillance from 10:30 a. m., June 22 to the arrest of the saboteur on June 27, and at least two testified in minute detail to each of repeated arrivals and departures of the saboteur, on some occasions accompanied by the defendant, on others by the defendant's wife, and on some by both. He entered each night and left each day. On some occasions he came out wearing different clothes from those he wore when he went in. When he went in at night the lights in the defendant's apartment were turned on and after a time extinguished. Two witnesses who were callers at the apartment testified that on one occasion defendant and Herbert were there together at supper time, the three Haupts being together in the kitchen, Herbert later coming into the parlor and one of the guests going into the kitchen. The defendant contends that this does not constitute the required two witnesses' direct proof that the saboteur was harbored and sheltered in the defendant's apartment. It is true that the front entrance, where all of this testimony shows the

saboteur to have entered, connected with two other apartments. The occupants of each of the other apartments, two witnesses as to each, testified that the saboteur did not at any time occupy their respective apartments.

It is sufficiently proved by direct testimony of two witnesses that the saboteur stayed in the house where the father lived and with the latter's knowledge. But it is said that this is not enough, that it fails because the two witnesses did not see him enter his parents' apartment therein. But the hospitality and harboring did not begin only at the apartment door. It began when he entered the building itself where he would have no business except as a guest or member of the family of one of the tenants. It is not necessary to show that he slept in the defendant's bed. Herbert was neither trespasser nor loiterer. He entered as the licensee of his father, and was under the privileges of the latter's tenancy even in parts of the building used in common with other tenants. His entrance to and sojourn in the building were made possible by the defendant, and the saboteur slept and stayed in some part of it with the father's knowledge and by his leave. We think the proof is sufficient to comply with the constitutional requirement that two witnesses testify to the overt acts in that group which charges harboring and sheltering of the saboteur.

The other group of submitted overt acts as to which it is claimed there is a deficiency of testimony relates to assistance which the defendant rendered to the saboteur in purchasing an automobile as alleged in Acts Nos. 15 and 16 of the indictment. According to the testimony of an automobile salesman, Farrell, the defendant came to his salesroom and said he wanted to buy a good used car of late model. Defendant selected a 1941 model Pontiac and asked about installment payments. After considerable discussion of terms, defendant paid $10 deposit on the price of $1045 and said he would come in next day to make a further payment. He signed an order for the car and

gave financial references. On the next day, defendant came to the salesroom and paid an additional $405, executing notes and finance contract. The son took the car and drove it away.

A second witness, Vinson, sales manager, corroborated the earlier parts of this transaction, but defendant claims his testimony is not sufficiently comprehensive to comply with the two-witness rule, especially as to overt acts 15 and 16, relating to events of the second day. Vinson at first said he did not see defendant and his son on that day. The trial court allowed counsel to refresh Vinson's recollection from his testimony given at the former trial of defendant. Vinson then testified that he did see the defendant and his son come in together and be together in the salesroom that evening but did not talk with them; that he received "the money that had been put down" on that evening and the note signed by the defendant. By approval of his answers at the former trial he affirmed that he receipted for the money. He also saw the invoice made that evening for the purchase and identified a copy of the bill of sale of the car to the defendant. He testified Farrell was there when the Haupts were.

It is said that Vinson's testimony falls short because it is not explicit as to who paid the money. Taking the testimony as a whole, Vinson has corroborated Farrell's testimony that the defendant came that night to the automobile salesroom, that he was accompanied by the saboteur, that a purchase of the automobile had been started and was pending. The partially completed transaction was one in which defendant himself became purchaser, signed his own name to the purchase note and furnished his own, not his son's, financial references. Vinson's testimony shows that this pending transaction was consummated on the latter night. It involved "a further payment in cash toward the purchase" and completing "arrangements for the purchase" which are alleged as the sixteenth act. Vinson said that he received the money.

Whoever actually handed over the money, it was apparently in defendant's presence and was paid on account of his obligation incurred the previous evening in signing the purchase contract.

The testimony of Vinson, in its interpretation most favorable to the jury's verdict seems clearly to have been testimony to the same overt act as that by Farrell. Defendant's counsel made no effort to correct any ambiguity in it by cross-examination. The defense of course is under no duty to do so; it may rely upon weakness in the prosecution's case. But it takes the risk, when it relies on an ambiguity rather than on a complete lack of legal proof, that the jury will resolve the meaning in favor of the prosecution. When enough has been shown to make a case for the jury we may not impeach the verdict by differing from them on equally reasonable views of a witness' meaning. We think the court was justified in submitting this overt act and the jury was justified in finding it proved.

The Constitution requires testimony to the alleged overt act and is not satisfied by testimony to some separate act from which it can be inferred that the charged act took place. And while two witnesses must testify to the same act, it is not required that their testimony be identical. Most overt acts are not single, separable acts, but are combinations of acts or courses of conduct made up of several elements. It is not easy to set by metes and bounds the permissible latitude between the testimony of the two required witnesses. It is perhaps easier to say on which side of the line a given case belongs than to draw a line that will separate all permissible disparities from forbidden ones. Concrete even if hypothetical cases may illustrate this.

One witness might hear a report, see a smoking gun in the hand of defendant and see the victim fall. Another might be deaf, but see the defendant raise and point the

gun, and see a puff of smoke from it. The testimony of both would certainly be "to the same overt act," although to different aspects. And each would be to the overt act of shooting, although neither saw the movement of a bullet from the gun to the victim. It would still be a remote possibility that the gun contained only a blank cartridge and the victim fell of heart failure. But it is not required that testimony be so minute as to exclude every fantastic hypothesis that can be suggested.

We think two witnesses testified to these overt acts and petitioner cannot seriously contend that two did not testify to each of the overt acts comprising the group of charges on obtaining a job. Since this was the constitutional measure of evidence as to each overt act submitted to the jury we do not reach the question whether the conviction could stand on some sufficiently proven acts, if others failed in proof.[1]

It is urged that the conviction cannot be sustained because there is no sufficient proof of adherence to the enemy, the acts of aid and comfort being natural acts of aid for defendant's own son. Certainly that relationship is a fact for the jury to weigh along with others, and they were correctly instructed that if they found that defendants' intention was not to injure the United States but merely to aid his son "as an individual, as distinguished from assisting him in his purposes, if such existed, of aid-

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[1] When, speaking of a general verdict of guilty in *Cramer* v. *United States*, 325 U. S. 1, 36, n. 45, we said "Since it is not possible to identify the grounds on which Cramer was convicted, the verdict must be set aside if any of the separable acts submitted was insufficient" of course we did not hold that one overt act properly proved and submitted would not sustain a conviction if the proof of other overt acts was insufficient. One such act may prove treason, and on review the conviction would be sustained, provided the record makes clear that the jury convicted on that overt act. But where several acts are pleaded in a single count and submitted to the jury, under instructions which allow a verdict of guilty on any one or more

ing the German Reich, or of injuring the United States, the defendant must be found not guilty." The defendant can complain of no error in such a submission. It was for the jury to weigh the evidence that the acts proceeded from parental solicitude against the evidence of adherence to the German cause. It is argued that Haupt merely had the misfortune to sire a traitor and all he did was to act as an indulgent father toward a disloyal son. In view however of the evidence of defendant's own statements that after the war he intended to return to Germany, that the United States was going to be defeated, that he would never permit his boy to join the American Army, that he would kill his son before he would send him to fight Germany, and others to the same effect, the jury apparently concluded that the son had the misfortune of being a chip of the old block—a tree inclined as the twig had been bent—metaphors which express the common sense observation that parents are as likely to influence the character of their children as are children to shape that of their parents. Such arguments are for the jury to decide.

It is also urged that errors were made in admission of evidence. Some of this concerned conversations and occurrences long prior to the indictment which were admitted to prove intent. They consisted of statements showing sympathy with Germany and with Hitler and hostility to the United States. Such testimony is to be

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of such acts, a reviewing court has no way of knowing that any wrongly submitted act was not the one convicted upon. If acts were pleaded in separate counts, or a special verdict were required as to each overt act of a single count, the conviction could be sustained on a single well-proved act. As the acts were here pleaded in a single count, and the jury were instructed that they could convict on any one, we would have to reverse if any act were insufficient or insufficiently proved. *Cf. Stromberg* v. *California*, 283 U. S. 359, 368; *Williams* v. *North Carolina*, 317 U. S. 287, 292, and *Cramer* v. *United States*, *supra*.

scrutinized with care to be certain the statements are not expressions of mere lawful and permissible difference of opinion with our own government or quite proper appreciation of the land of birth. But these statements were explicit and clearly were admissible on the question of intent and adherence to the enemy. Their weight was for the jury.

Evidence of F. B. I. agents and of defendant's fellow prisoners as to conversations is also said to be inadmissible. The Constitution requires that "No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court." It is claimed that the statements of defendant were confessions, and as they were not made in open court were inadmissible as evidence. If there were not the required two-witness testimony and it was sought to supply that defect by confession, we would have a different question. But having found the legal basis for the conviction laid by the testimony of two witnesses, we find nothing in the text or policy of the Constitution to preclude using out-of-court admissions or confessions.

It may be doubted whether the Constitutional reference to confession in open court has application to any admission of a fact other than a complete confession to guilt of the crime. The statements of defendant did not go so far. They were admissions of specific acts and knowledge as to which, insofar as they were overt acts charged, the required two witnesses also testified. There has been no attempt to convict here on such admissions alone, or to use the admissions to supply defects in the Constitutional measure of proof. If such an attempt were made we would be faced with a novel question. But here the admissions are merely corroborative of a legal basis laid by testimony and the Constitution does not preclude using out-of-court admissions or confessions in this way. *Cf. Respublica* v. *Roberts*, 1 Dall. 39; *Case of Fries* Fed. Case No. 5126, 9 Fed. Cas. 826, 909.

There are many other complaints about the conduct of the trial, such as permitting the indictment to go to the jury room, allowing the jury to have a typewritten copy of the court's charge, holding the jury together for a long time, reading the testimony of certain witnesses to the jury at its request and failing to order a special verdict. We find nothing in any of them to warrant the inference of unfairness or irregularity in the trial. It is also claimed that the prosecution made improper appeals to passion. Unfortunately it is the nature of the charge of betrayal that it easily stirs feelings, and that is one of the reasons such safeguards have been thrown around its trial. But we find no such conduct as would invalidate the conviction.

Haupt has been twice tried and twice found guilty. The law of treason makes and properly makes conviction difficult but not impossible. His acts aided an enemy of the United States toward accomplishing his mission of sabotage. The mission was frustrated but defendant did his best to make it succeed. His overt acts were proved in compliance with the hard test of the Constitution, are hardly denied, and the proof leaves no reasonable doubt of the guilt.

The judgment is

Affirmed.

SUPREME COURT OF THE UNITED STATES

No. 49.—October Term, 1946.

Hans Max Haupt, Petitioner, v. The United States of America.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[March 31, 1947.]

Mr. Justice Douglas.

There is a close parallel between this case and *Cramer* v. *United States*, 325 U. S. 1.

Two witnesses saw Cramer talking with an enemy agent. So far as they knew the conversation may have been wholly innocent, as they did not overhear it. But Cramer, by his own testimony at the trial, explained what took place: he knew or had reason to believe that the agent was here on a mission for the enemy and arranged, among other things, to conceal the funds brought here to promote the project. Thus there was the most credible evidence that Cramer was guilty of "adhering" to the enemy, giving him "aid and comfort": Article III, § 3 of the Constitution. And the overt act which joined him with the enemy agent was proved by two witnesses. Cramer's conviction, however, was set aside because two witnesses did not testify to the treasonable character of Cramer's meeting with the enemy agent.

Two witnesses saw the son enter Haupt's apartment house at night and leave in the morning. That act, without more, was as innocent as Cramer's conversation with the agent. For nothing would be more natural and normal, or more "commonplace" (325 U. S. p. 34), or less suspicious, or less "incriminating" (325 U. S. p. 35), than the act of a father opening the family door to a son. That act raised, therefore, no more implication that the father was giving his son aid and comfort in a treasonable project than did the meeting of the defendant with the enemy agent in the *Cramer* case. But that act, wholly innocent on its face, was shown to be of a treasonable character, not

by the two witnesses, but by other evidence: that Haupt was sympathetic with the Nazi cause, that he knew the nature of his son's mission to this country. Haupt's conviction is sustained, though the conversion of an innocent appearing act into a treasonable act is not made by two witnesses.

The Constitution provides:

> "Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court." Article III, § 3.

As the *Cramer* case makes plain, the overt act and the intent with which it is done are separate and distinct elements of the crime. Intent need not be proved by two witnesses but may be inferred from all the circumstances surrounding the overt act. But if two witnesses are not required to prove treasonable intent, two witnesses need not be required to show the treasonable character of the overt act. For proof of treasonable intent in the doing of the overt act necessarily involves proof that the accused committed the overt act with the knowledge or understanding of its treasonable character.

The requirement of an overt act is to make certain a treasonable project has moved from the realm of thought into the realm of action. That requirement is undeniably met in the present case, as it was in the case of *Cramer*.

The *Cramer* case departed from those rules when it held that "The two-witness principle is to interdict imputation of *incriminating acts* to the accused by circumstantial evidence or by the testimony of a single witness." 325 U. S. p. 35. The present decision is truer to the constitutional definition of treason when it forsakes that test and holds that an act, quite innocent on its face, does not need two witnesses to be transformed into an incriminating one.

SUPREME COURT OF THE UNITED STATES

No. 49.—October Term, 1946.

Hans Max Haupt, Petitioner, *v.* The United States of America.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[March 31, 1947.]

Mr. Justice Murphy, dissenting.

This case grows out of a singular set of circumstances that, when combined with the serious nature of the alleged crime, warrants extraordinary scrutiny. Petitioner's son was tried as a saboteur before a military tribunal, convicted and executed. See *Ex parte Quirin*, 317 U. S. 1. Petitioner, his wife and four others were then jointly tried for treason. All were convicted, petitioner being sentenced to death and his wife to 20 years' imprisonment. *United States* v. *Haupt*, 47 F. Supp. 832; 47 F. Supp. 836. These convictions, however, were reversed upon appeal. *United States* v. *Haupt*, 136 F. 2d 661. Petitioner has now been retried separately for treason; again he has been found guilty, with the sentence being reduced to life imprisonment and a $10,000 fine. 152 F. 2d 771.

Petitioner was charged with having committed three general types of overt acts of treason: (1) harboring and sheltering his son; (2) assisting his son in obtaining reemployment; (3) accompanying and assisting his son in the purchase of an automobile. All of these alleged overt acts were contained in a single count of the indictment and the jury's verdict was a general one. The Court indicates that a fatal deficiency as to any of the alleged overt acts under such circumstances invalidates the conviction. Since the acts relating to the harboring and sheltering

of petitioner's son did not, in my opinion, amount to overt acts of treason, I would accordingly reverse the judgment below, regardless of the sufficiency of the other acts.

The high crime of treason, as I understand it, consists of an act rendering aid and comfort to the enemy by one who adheres to the enemy's cause. *Cramer* v. *United States*, 325 U. S. 1. The act may be one which extends material aid; or it may be one which merely lends comfort and encouragement. The act may appear to be innocent on its face, yet prove to be treasonable in nature when examined in light of its purpose and context.

It does not follow, however, that every act that gives aid and comfort to an enemy agent constitutes an overt act of treason, even though the agent's status is known. The touch of one who aids is not Midas-like, giving a treasonable hue to every move. An act of assistance may be of the type which springs from the well of human kindness, from the natural devotion to family and friends, or from a practical application of religious tenets. Such acts are not treasonous, however else they may be described. They are not treasonous even though, in a sense, they help in the effectuation of the unlawful purpose. To rise to the status of an overt act of treason, an act of assistance must be utterly incompatible with any of the foregoing sources of action. It must be an act which is consistent only with a treasonable intention and with the accomplishment of the treasonable plan, giving due consideration to all the relevant surrounding circumstances. Thus an act of supplying a military map to a saboteur for use in the execution of his nefarious plot is an overt act of treason since it excludes all possibility of having been motivated by non-treasonable considerations. But an act of providing a meal to an enemy agent who is also one's son retains the possibility of having a non-treasonable basis even when performed in a treasonable

setting; accordingly, it cannot qualify as an overt act of treason.

It is true that reasonable doubts may be raised as to whether or not the prime motive for an act was treasonous. Yet the nature of some acts is such that a non-treasonous motive cannot be completely dismissed as a possibility. An overt act of treason, however, should rest upon something more substantial than a reasonable doubt. Treason is different from ordinary crimes, possessing unique and difficult standards of proof which confine it within narrow spheres. It has such serious connotations that its substance cannot be left to conjecture. Only when the alleged overt act manifests treason beyond all reasonable doubt can we be certain that the traitor's stigma will be limited to those whose actions constitute a real threat to the safety of the nation.

Tested by that standard, the conviction in the instant case cannot be sustained. Petitioner, it is said, had the misfortune to sire a traitor. That son lived with petitioner and his wife in their Chicago apartment. After a sojourn in Germany for training as a saboteur, the son returned to the Chicago apartment and began to make preparations to carry out his mission of sabotage. It is claimed that petitioner knew of his son's activities and desired to help him. For six days prior to his arrest, the son lived in petitioner's apartment; he was not secreted in any way, coming and going as he normally would have done.

The indictment alleged that petitioner committed an overt act of treason by sheltering and harboring his son for those six days. Concededly, this was a natural act for a father to perform; it is consistent with parental devotion for a father to shelter his son, especially when the son ordinarily lives with the father. But the Court says that the jury might find, under appropriate instructions,

that petitioner provided this shelter, not merely as an act of an indulgent father toward a disloyal son, but as an act designed to injure the United States. A saboteur must be lodged in a safe place if his mission is to be effected and the jury might well find that petitioner lodged his son for that purpose.

But the act of providing shelter was of the type that might naturally arise out of petitioner's relationship to his son, as the Court recognizes. By its very nature, therefore, it is a non-treasonous act. That is true even when the act is viewed in light of all the surrounding circumstances. All that can be said is that the problem of whether it was motivated by treasonous or non-treasonous factors is left in doubt. It is therefore not an overt act of treason, regardless of how unlawful it might otherwise be.